



Scottish Police Federation

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Dear Colleague

Air Weapons and Licensing (Scotland) Bill - call for evidence - Consultation

I refer to the above and attach herewith the Bill and supporting documents for your perusal.

I would be obliged if you could submit any comments/observations you may have on the Bill to lesley.stevenson@spf.org.uk by **Monday 11 August 2014**.

Yours sincerely

Calum Steele
General Secretary

Air Weapons and Licensing (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 49-EN. A Policy Memorandum is printed separately as SP Bill 49-PM.

Air Weapons and Licensing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

PART 1

AIR WEAPONS

Meaning of air weapon

1 Meaning of “air weapon”

- (1) This section defines the expression “air weapon” for the purposes of this Part.
- (2) The expression generally has the same meaning as that given in section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”).
- (3) In addition, the expression includes—
 - (a) the component parts of an air weapon (within the meaning of section 1(3)(b) of the 1968 Act), and
 - (b) any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.
- (4) But the expression does not include—
 - (a) an air weapon (within the meaning of section 1(3)(b) of the 1968 Act)—
 - (i) which is not capable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon, or
 - (ii) that is designed to be used only when submerged in water, or
 - (b) the component parts of an air weapon described in paragraph (a)(i) or (ii).
- (5) Other words and expressions used in this Part are defined in section 40.

*Air weapon certificates***2 Requirement for air weapon certificate**

- (1) It is an offence for a person to use, possess, purchase or acquire an air weapon without holding an air weapon certificate.
- 5 (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- 10 (3) Schedule 1 contains exemptions from—
- (a) the offence under subsection (1), and
 - (b) certain other offences under this Part.
- (4) The Scottish Ministers may by regulations amend schedule 1 so as to—
- (a) add further exemptions,
 - 15 (b) remove or modify exemptions.

3 Application for grant or renewal of air weapon certificate

- (1) An individual aged 14 years or more may apply to the chief constable for—
- (a) the grant of an air weapon certificate, or
 - (b) the renewal of an air weapon certificate.
- 20 (2) An application is valid only if it complies with the requirements of—
- (a) section 4 (verification of applications),
 - (b) if applicable, section 7 (special requirements and conditions for young persons), and
 - (c) any regulations under section 37 which apply to the application.
- 25 (3) The chief constable must maintain a register containing the details of each application made under this section (whether or not the application results in an air weapon certificate being granted or renewed).

4 Verification of applications

- 30 (1) An application for the grant or renewal of an air weapon certificate must be verified in the prescribed form and manner by an individual who meets the requirements of subsection (2) (“a verifier”).
- (2) The requirements are that a verifier must—
- (a) have known the applicant for at least 2 years,
 - (b) in the opinion of the chief constable, be of good standing in the community,
 - 35 (c) not be—
- (i) a relative of the applicant,
 - (ii) a registered firearms dealer,

- (iii) a constable or a member of police staff,
- (iv) a member of, or a member of staff of, the Scottish Police Authority, or
- (v) ordinarily resident outwith the United Kingdom.

- 5 (3) In verifying the application, a verifier must confirm that, to the best of the verifier's knowledge and belief, the information supplied in the application is correct.

5 Grant or renewal of air weapon certificate

- (1) The chief constable may only grant or renew an air weapon certificate if satisfied that the applicant—

- (a) is fit to be entrusted with an air weapon,
- 10 (b) is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act,
- (c) has a good reason for using, possessing, purchasing or acquiring an air weapon, and
- 15 (d) in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

- (2) The chief constable may, when considering an application made under section 3 by an applicant who holds a firearm or shot gun certificate, treat paragraphs (a) and (b) of subsection (1) as being satisfied in relation to the applicant.

- 20 (3) The chief constable may, before determining an application made under section 3, require that the applicant permit a constable or member of police staff—

- (a) to visit the applicant at the applicant's usual place of residence,
- (b) to inspect any place where the applicant intends to store or use an air weapon.

6 Air weapon certificate: conditions

- (1) Every air weapon certificate is subject to any prescribed mandatory conditions.

- 25 (2) The chief constable may, when granting or renewing an air weapon certificate, attach conditions to the certificate (and, in the case of a renewal, may attach different conditions from those attached to the certificate prior to its renewal).

- (3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—

- 30 (a) a prescribed mandatory condition which applies to air weapon certificates, or
- (b) a condition which must be attached to the certificate under this Part.

- (4) It is an offence for a holder of an air weapon certificate to fail to comply with a condition attached to the holder's certificate.

- 35 (5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

7 Special requirements and conditions for young persons

- (1) This section applies where an applicant for an air weapon certificate is under the age of 18.

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- (2) A parent or guardian of the applicant must consent in the prescribed form and manner to the applicant making the application.
- (3) Where the chief constable grants an air weapon certificate to an individual under the age of 18, the chief constable must attach to the certificate—
- 5 (a) the condition described in subsection (4),
- (b) one or more of the conditions described in subsection (5).
- (4) The condition is that the holder may not purchase or otherwise own an air weapon.
- (5) The conditions are that—
- 10 (a) the holder may use and possess an air weapon only for the purposes of target shooting on private land,
- (b) the holder may use and possess an air weapon only for the purposes of participating in events or competitions,
- (c) the holder may use and possess an air weapon only for the purposes of the holder’s membership of an approved air weapon club,
- 15 (d) the holder may use and possess an air weapon only for the purposes of protecting livestock, crops or produce on land used for or in connection with agriculture,
- (e) the holder may use and possess an air weapon only while carrying on business as a pest controller or acting as the employee of a pest controller.
- (6) It is sufficient, for the purposes of section 5(1)(c), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.
- 20 (7) For the purposes of this section, “agriculture” is to be construed in accordance with section 85 of the Agricultural Holdings (Scotland) Act 1991.

8 Duration of air weapon certificate

- (1) An air weapon certificate expires (unless earlier revoked or cancelled)—
- 25 (a) in the case of a certificate granted to an individual under the age of 18, when the individual attains the age of 18,
- (b) in any other case, at the end of the period of 5 years beginning with the date on which the certificate is granted or renewed.
- (2) Where an individual has applied for the renewal of an air weapon certificate before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the certificate is to continue to have effect until the application is determined.
- 30 (3) The Scottish Ministers may by regulations amend subsection (1)(b) to specify a different period.

9 Alignment of different types of certificate

- (1) Subsection (2) applies where an individual—
- 35 (a) holds a firearm or shot gun certificate, and
- (b) makes an application for the grant or renewal of an air weapon certificate under section 3.

- 5 (2) Where this subsection applies, the applicant may request that the chief constable grant or renew an air weapon certificate for such shorter period than is provided for in section 8 as is appropriate to secure that it expires on the same day as the applicant's firearm or shot gun certificate (or, if the applicant holds both a firearm and shot gun certificate, either of them).
- (3) Subsection (4) applies where an individual—
- (a) holds an air weapon certificate, and
 - (b) makes an application for the grant or renewal of a firearm or shot gun certificate under the 1968 Act.
- 10 (4) Where this subsection applies, the applicant may make an application under section 3 of this Act for the air weapon certificate to be renewed as from the same day as that on which the firearm or shot gun certificate is granted or renewed.

10 Variation of air weapon certificate

- 15 (1) The chief constable may, by giving notice to the holder of an air weapon certificate—
- (a) vary the holder's certificate,
 - (b) attach conditions to the certificate, or
 - (c) vary or revoke a condition attached to the certificate other than—
 - 20 (i) a prescribed mandatory condition which applies to air weapon certificates, or
 - (ii) a condition which must be attached to the certificate under this Part.
- (2) The chief constable may give a notice under subsection (1)—
- (a) on the application of the holder of an air weapon certificate, or
 - (b) of the chief constable's own accord (at any time).
- 25 (3) The chief constable may not attach to an air weapon certificate a condition which is inconsistent with—
- (a) a prescribed mandatory condition which applies to air weapon certificates, or
 - (b) a condition which must be attached to the certificate under this Part.
- 30 (4) For the purposes of this section, the chief constable may by notice given to the holder of an air weapon certificate require the holder to produce the certificate within the period of 21 days beginning with the date on which the notice is given.

11 Revocation of air weapon certificate

- (1) The chief constable must revoke an air weapon certificate if—
- 35 (a) the chief constable is satisfied that the holder of the certificate cannot be permitted to possess an air weapon without danger to the public safety or to the peace, or
 - (b) the holder is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.
- (2) The chief constable may revoke an air weapon certificate if—
- (a) the chief constable has reason to believe that the holder—
 - (i) is not a fit person to be entrusted with an air weapon, or

- (ii) does not have a good reason to use, possess, purchase or acquire an air weapon,
- (b) the chief constable is satisfied that the holder of the certificate has failed to comply with a condition attached to the certificate, or
- 5 (c) the holder fails to produce the certificate when required to do so under section 10(4).
- (3) An air weapon certificate is revoked by the chief constable giving notice to the holder of the certificate to that effect.
- (4) A notice under subsection (3) must—
- 10 (a) be given at least 7 days before the date on which the revocation is to take effect, and
- (b) require the holder to surrender the certificate and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.
- (5) It is an offence for a person, without reasonable excuse, to fail to comply with the requirements of a notice given under subsection (3).
- 15 (6) A person who commits an offence under subsection (5) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (7) In the event that the holder of an air weapon certificate makes an appeal under section 35 against a decision to revoke the holder's certificate—
- 20 (a) the revocation does not take effect, but
- (b) the holder must still surrender the certificate and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (3),
- pending the determination or withdrawal of the appeal.

25 *Permits*

12 Police permits

- (1) The chief constable may, on the application of an individual, grant a permit (“a police permit”) authorising the individual—
- 30 (a) to possess or acquire an air weapon without holding an air weapon certificate, or
- (b) to sell (or expose for sale) an air weapon in the course of that individual's business.
- (2) A police permit must not be granted to an individual who is prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.
- (3) A police permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.
- 35 (4) An application for a police permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.

13 Visitor permits

- 5 (1) The chief constable may, on the application of a qualifying visitor, grant a permit (“a visitor permit”) authorising the visitor to use, possess, purchase or acquire an air weapon without holding an air weapon certificate for the period (or a part of it) that the qualifying visitor is in Scotland.
- (2) A person may, on behalf of a group of 2 to 20 qualifying visitors, make an application to the chief constable for each member of the group to be granted a visitor permit.
- (3) The chief constable may grant a visitor permit to some or all of the members of the group.
- 10 (4) The chief constable may grant a visitor permit only if satisfied—
- (a) in the case of an individual application, that the qualifying visitor has a good reason for using, possessing, purchasing or acquiring an air weapon while visiting Scotland,
- (b) in the case of a group application, that each qualifying visitor is to use and possess an air weapon while visiting Scotland only—
- 15 (i) for sporting purposes (including shooting live quarry) on private land,
- (ii) for the purposes of target shooting on private land, or
- (iii) for the purposes of participating in an event or competition,
- (c) in every case—
- 20 (i) that the qualifying visitor can be permitted to possess an air weapon without danger to the public safety or to the peace, and
- (ii) that the qualifying visitor is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act.
- (5) For the purposes of subsection (4)(b)(i) and (ii) the chief constable may require the applicant to produce evidence that the owner or occupier of the land consents to the visitors’ intended use or possession of air weapons on the land.
- 25 (6) Except where section 14 applies, the chief constable must, on granting a visitor permit in respect of a group application, attach to the permit as a condition that the holder of the permit may use and possess an air weapon only for such of the purposes described in subsection (4)(b) as the chief constable may specify in the condition.
- 30 (7) A visitor permit expires (unless earlier revoked or cancelled) on the expiry date specified in the permit.
- (8) No visitor permit is to be granted for a period of longer than 12 months.
- (9) An application for a visitor permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.
- 35 (10) For the purposes of this section and section 14—

“group application” means an application under subsection (2) for visitor permits made by a person on behalf of qualifying visitors in a group,

“individual application” means an application under subsection (1) for a visitor permit made by the qualifying visitor,

“qualifying visitor” means an individual who is—

- 40 (a) aged 14 years or more,

- (b) not ordinarily resident in Scotland, and
- (c) visiting (or intending to visit) Scotland.

14 Visitor permits: young persons

- (1) This section applies—
- (a) where an individual applicant for a visitor permit is under the age of 18,
 - (b) in respect of any individual who is—
 - (i) under the age of 18, and
 - (ii) on whose behalf a visitor permit is applied for as part of a group application.
- (2) A parent or guardian of the applicant or individual under the age of 18 must consent in the prescribed form and manner to the making of the application.
- (3) The chief constable must, on granting a visitor permit in respect of an individual application, attach to the permit—
- (a) the condition described in section 7(4), and
 - (b) one or more of the conditions described in subsection (5) of that section.
- (4) The chief constable must, on granting a visitor permit in respect of a group application, attach to the permit—
- (a) the condition described in section 7(4), and
 - (b) either or both of the conditions described in paragraphs (a) and (b) of subsection (5) of that section.
- (5) It is sufficient, for the purposes of section 13(4)(a), for the chief constable to be satisfied that the applicant has a good reason for using or possessing an air weapon.
- (6) The chief constable is not, in respect of a group application, to be satisfied that the individual's use and possession of an air weapon is for the purposes described in section 13(4)(b)(i).

15 Police and visitor permits: conditions

- (1) Every police permit and visitor permit is subject to any prescribed mandatory conditions.
- (2) The chief constable may, when granting a police permit or a visitor permit, attach conditions to the permit.
- (3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—
- (a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or
 - (b) a condition which must be attached to the permit under this Part.
- (4) It is an offence for the holder of a police permit or a visitor permit to fail to comply with a condition attached to the permit.
- (5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

16 Police and visitor permits: variation and revocation

- (1) The chief constable may, by giving notice to the holder of a police permit or a visitor permit—
- (a) vary the permit,
 - (b) attach conditions to the permit,
 - (c) vary or revoke a condition attached to the permit other than—
 - (i) a prescribed mandatory condition which applies to the permit, or
 - (ii) a condition which must be attached to a permit under this Part, or
 - (d) revoke the permit.
- (2) The chief constable may give a notice under subsection (1)—
- (a) on the application of the holder of a police permit or visitor permit, or
 - (b) of the chief constable's own accord (at any time).
- (3) The chief constable may not attach to a police permit or a visitor permit a condition which is inconsistent with—
- (a) a prescribed mandatory condition which applies to police permits or, as the case may be, visitor permits, or
 - (b) a condition which must be attached to the permit under this Part.
- (4) For the purposes of paragraphs (a) to (c) of subsection (1), the chief constable may by giving notice to the holder of a police permit or a visitor permit require the holder to produce the permit within the period of 21 days beginning with the date on which the notice is given.
- (5) A notice given under subsection (1) which revokes a police permit or a visitor permit must—
- (a) be given at least 7 days before the date on which the revocation is to take effect, and
 - (b) require the holder of the permit to surrender the permit and any air weapons that the holder possesses by such date as the chief constable may specify in the notice.
- (6) It is an offence for the holder of a police permit or a visitor permit, without reasonable excuse, to fail to comply with a requirement contained in a notice under subsection (1).
- (7) An individual who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (8) In the event that the holder of a police permit or a visitor permit makes an appeal under section 35 against a decision to revoke the holder's permit—
- (a) the revocation does not take effect, but
 - (b) the holder must still surrender the permit and any air weapons that the holder possesses in accordance with the requirements of the notice given under subsection (1),

pending the determination or withdrawal of the appeal.

17 Event permits

- (1) The chief constable may, on the application of a person (“the organiser”) who is organising or otherwise responsible for an event, grant a permit authorising individuals at the event to borrow, hire, use and possess air weapons while engaging in an event activity without holding an air weapon certificate (“an event permit”).
- (2) The chief constable may, when granting an event permit, attach conditions to it.
- (3) The organiser must ensure that the event permit (or a copy of it) is prominently displayed at the event so as to be capable of being read by any person attending the event.
- (4) It is an offence for the organiser—
- (a) to fail to comply with a condition attached to the event permit, or
 - (b) without reasonable excuse, to fail to comply with subsection (3).
- (5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) An application for an event permit is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.
- (7) For the purposes of this section, an “event activity” is an activity—
- (a) involving the use and possession of air weapons by individuals, and
 - (b) which has been planned by (or on behalf of) the organiser as part of the event.

*Air weapon clubs and recreational shooting facilities***18 Approval of air weapon clubs**

- (1) The chief constable may, on the application of an air weapon club, grant or renew an approval of the club.
- (2) An application for the grant or renewal of an approval of an air weapon club is valid only if it complies with the requirements of any regulations under section 37 which apply to the application.
- (3) The chief constable may, at any time by giving notice to an approved air weapon club, withdraw the club’s approval.
- (4) Every approval of an air weapon club is subject to any prescribed mandatory conditions.
- (5) The chief constable may, when granting or renewing an approval, attach conditions to the approval (and in the case of a renewal, may attach different conditions from those attached to the approval prior to its renewal).
- (6) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

19 Variation of approval

- (1) The chief constable may, by giving notice in writing to an approved air weapon club—
- (a) vary the club’s approval,
 - (b) attach conditions to the club’s approval, or

(c) vary or revoke a condition attached to the club's approval other than a prescribed mandatory condition which applies to approvals.

(2) The chief constable may give a notice under subsection (1)—

(a) on the application of the approved air weapon club, or

(b) of the chief constable's own accord (at any time).

(3) The chief constable may not attach to an approval a condition which is inconsistent with a prescribed mandatory condition which applies to approvals.

20 Duration of approval

(1) An approval of an air weapon club expires (unless earlier withdrawn) at the end of the period of 6 years beginning with the date on which the approval is granted or renewed.

(2) Where an approved air weapon club has applied for the renewal of its approval before its expiry but the chief constable has not, as at the date of its expiry, determined whether or not to grant the renewal, the approval is to continue to have effect until the application is determined.

(3) The Scottish Ministers may by regulations amend subsection (1) to specify a different period.

21 Alignment of club approvals

(1) Subsection (2) applies where an air weapon club—

(a) is approved as a rifle club under section 15 of the Firearms (Amendment) Act 1988 ("the 1988 Act"), and

(b) makes an application for the grant or renewal of an approval under section 18(1) of this Act.

(2) Where this subsection applies, the club may request that the chief constable grant or renew its approval under section 18(1) of this Act for such shorter period than is provided for in section 20(1) of this Act as is appropriate to secure that it expires on the same day as the club's approval under section 15 of the 1988 Act.

(3) Subsection (4) applies where a club—

(a) is an approved air weapon club, and

(b) makes an application for the grant or renewal of an approval as a rifle club under section 15 of the 1988 Act.

(4) Where this subsection applies, the club may make an application under section 18(1) of this Act for the club's approval to be renewed as from the same day as that on which the club's application for approval under section 15 of the 1988 Act is granted or renewed.

22 Power to enter and inspect club premises

(1) The chief constable may, for the purposes of ascertaining whether the provisions of this Part or any conditions attached to an approved air weapon club's approval are being complied with, authorise a constable or a member of police staff—

(a) to enter any club premises of an approved air weapon club, and

(b) to inspect those premises and anything on them which is relevant to the purposes for which the authorisation was granted.

- 5 (2) The power of a constable or a member of police staff under subsection (1)(b) to inspect anything on club premises includes power to require any information which is stored in electronic form and accessible from the premises to be produced in a form which is visible and legible.
- 10 (3) A constable or a member of police staff may exercise the powers of entry conferred by this section only at a reasonable time, unless it appears to the constable or member of police staff that the purposes of entering the club premises may be frustrated if the constable or member of police staff seeks to enter at a reasonable time.
- (4) A constable or a member of police staff must, if asked, produce the authorisation before entering any premises under this section.
- (5) The chief constable may delegate the power to grant an authorisation under subsection (1) only to a constable who holds the rank of inspector or above.
- 15 (6) It is an offence for a person to obstruct intentionally a constable or a member of police staff in the exercise of the constable's or member of police staff's powers under an authorisation granted under this section.
- (7) A person who commits an offence under subsection (6) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- 20 (8) In this section, "club premises", in relation to an approved air weapon club, means any premises, other than a dwelling, occupied or used by the club.

23 Requirements for recreational shooting facilities

- (1) A person who operates a recreational shooting facility must—
- 25 (a) hold or (if not an individual) ensure that an individual responsible for the management and operation of the facility holds, an air weapon certificate, and
- (b) at all times that the facility is in use, display the certificate (or a copy of it) prominently on the facility so as to be capable of being read by anyone considering whether to use the facility.
- (2) It is an offence for a person who operates a recreational shooting facility—
- 30 (a) to fail to comply with subsection (1)(a), or
- (b) without reasonable excuse, to fail to comply with subsection (1)(b).
- (3) A person who commits an offence under subsection (2) is liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).
- 35 (4) In this section, "recreational shooting facility" means—
- (a) a miniature rifle range or a shooting gallery at which air weapons are used, or
- (b) a facility for combat games which involve using an air weapon, which is operated with a view to making a profit.
- (5) This section does not apply to an approved air weapon club.

Transactions involving air weapons and commercial matters

24 Restrictions on transactions involving air weapons

- (1) It is an offence for a person other than a registered firearms dealer, by way of trade or business, to—
- 5 (a) manufacture, sell, transfer, repair or test an air weapon,
 (b) expose an air weapon for sale or transfer, or
 (c) possess an air weapon for the purposes of its sale, transfer, repair or testing.
- (2) It is an offence for a person (“A”) to sell or transfer an air weapon to another person (“B”) unless—
- 10 (a) B is a registered firearms dealer,
 (b) B holds an air weapon certificate (without a condition attached to it preventing B from purchasing or acquiring an air weapon) and shows it to A,
 (c) A is a registered firearms dealer and is satisfied that—
- 15 (i) in a case where B is an individual, B is aged 18 years or more, and
 (ii) the air weapon is to be delivered to a place outwith Great Britain without first coming into B’s possession, or
- (d) B provides evidence to A that B is otherwise entitled to purchase or acquire an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.
- 20 (3) It is an offence for a person (“A”) to manufacture, repair or test an air weapon for another person (“B”) unless—
- (a) B is a registered firearms dealer,
 (b) B holds an air weapon certificate and shows it to A, or
 (c) B provides evidence to A that B is otherwise entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Part.
- 25 (4) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- 30

25 Requirement for commercial sales of air weapons to be in person

- (1) This section applies where a person (“the seller”) sells an air weapon by way of trade or business to an individual in Great Britain who is not a registered firearms dealer.
- 35 (2) It is an offence for the seller, for the purposes of the sale, to transfer possession of the weapon to the purchaser otherwise than at a time when both the purchaser and the seller (or a representative of the seller) are present in person.
- (3) The reference in subsection (2) to a representative of the seller is a reference to—
- (a) a person who is employed by the seller in the seller’s business as a registered firearms dealer,

(b) a registered firearms dealer (“A”) who has been authorised by the seller to act on the seller’s behalf in relation to the sale, or

(c) a person who is employed by A in A’s business as a registered firearms dealer.

- (4) A person who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

26 Requirement to notify chief constable of certain sales

- (1) This section applies where a registered firearms dealer sells an air weapon—

(a) to an individual who—

(i) does not hold an air weapon certificate, and

(ii) is aged 18 years or more, and

(b) the air weapon is to be delivered to a place outwith Great Britain without first coming into the purchaser’s possession.

- (2) The registered firearms dealer must, within 48 hours of the sale, give notice of the transaction to the chief constable.

- (3) A notice given under subsection (2) must include the particulars of the transaction which the registered firearms dealer is required to enter in the register kept by the dealer under section 40 of the 1968 Act.

- (4) It is an offence for a registered firearms dealer to fail to comply with subsection (2).

- (5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Enforcement

27 Power of search with warrant

- (1) A sheriff may, on the application of a constable or a member of police staff, grant a warrant to the applicant under this section if satisfied, by evidence on oath, that there is a reasonable ground for suspecting—

(a) that an air weapon offence has been, is being, or is about to be committed, or

(b) that, in connection with an air weapon, there is a danger to the public safety or to the peace.

- (2) A warrant under this section may authorise a constable or a member of police staff—

(a) to enter at any time any place named in the warrant, if necessary by force, and to search the place and every person found there,

(b) to seize and detain anything that the constable or member of police staff may find at the place, or on any such person, in respect of which or in connection with which the constable or member of police staff has a reasonable ground for suspecting—

(i) that an air weapon offence has been, is being or is about to be committed, or

(ii) that in connection with an air weapon there is a danger to the public safety or to the peace.

- (3) The power of a constable or a member of police staff under subsection (2)(b) to seize and detain anything found at any place, or on any person found there, includes power to require any information which is stored in any electronic form and is accessible from the place or by the person to be produced in a form—

- 5 (a) which is visible and legible and can be taken away, or
(b) from which it can be readily produced in a visible and legible form and can be taken away.

- 10 (4) It is an offence for an individual to obstruct intentionally a constable or member of police staff in the exercise of the constable's or member of police staff's powers under a warrant granted under this section.

- (5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

28 Production of air weapon certificate

- 15 (1) A constable may require a person whom the constable believes to be in possession of an air weapon to produce—

- (a) the person's air weapon certificate, or
(b) evidence that the person is entitled to possess an air weapon without holding an air weapon certificate by virtue of the provisions of this Act.

- 20 (2) Where a person fails to produce the air weapon certificate or evidence required under subsection (1), the constable may—

- (a) seize and detain the air weapon, and
(b) require the person to provide (immediately) the person's name and address.

- (3) It is an offence for a person—

- 25 (a) to fail to comply with a requirement under subsection (2)(b), or
(b) to provide a false name or address.

- (4) A person who commits an offence under subsection (3) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

29 Cancellation of air weapon certificate

- 30 (1) Subsection (2) applies where an individual ("A") holding an air weapon certificate—

- (a) is convicted of—

- 35 (i) an air weapon offence,
(ii) an offence under the 1968 Act, or
(iii) an offence for which A is sentenced to imprisonment or to detention in a young offenders' institution,

- (b) has been ordered to keep the peace or to be of good behaviour and, as a condition of that, is not to possess, carry or use an air weapon or other firearm,

- 40 (c) is subject to a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 which contains a requirement not to possess, carry or use an air weapon or other firearm, or

(d) has been ordained to find caution and as a condition of that, is not to possess, carry or use an air weapon or other firearm.

(2) Where this subsection applies, the court by or before which A is convicted, or which imposes the condition or requirement, may cancel the air weapon certificate held by A.

5 (3) Where the court cancels an air weapon certificate under this section—

(a) the court must notify the chief constable of the cancellation, and

(b) the chief constable must, by notice given to A, require A to surrender A's air weapon certificate within the period of 21 days beginning with the date the notice is given.

10 (4) It is an offence for an individual, without reasonable excuse, to fail to comply with the requirements of a notice under subsection (3)(b).

(5) An individual who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

30 Forfeiture and disposal of air weapons

15 (1) Subsection (2) applies where a person ("A") is convicted of an air weapon offence.

(2) Where this subsection applies, the court by or before which A is convicted may make such order as to the forfeiture or disposal of any air weapon found in A's possession as the court thinks fit.

20 (3) A constable may seize and detain an air weapon which may be the subject of an order for forfeiture under this section or which, but for subsection (5), could be the subject of such an order.

(4) A sheriff may, on an application of the chief constable, order the disposal (by any means the chief constable thinks fit) of any air weapon seized and detained by a constable under this Part.

25 (5) No order is to be made under subsection (2) or (4) for the forfeiture or disposal of an air weapon which is possessed for the purposes of a museum.

(6) Subsection (7) applies where—

(a) an air weapon is surrendered in pursuance of—

30 (i) a notice given under section 11(3) which revokes an individual's air weapon certificate, or

(ii) a notice given under section 16(1) which revokes an individual's police permit or visitor permit, and

(b) the individual appeals against the decision to revoke the individual's air weapon certificate, police permit or, as the case may be, visitor permit (and does not withdraw that appeal prior to its determination).

35 (7) Where this subsection applies—

(a) if the appeal is successful, the air weapon must be returned,

(b) if the appeal is dismissed, the sheriff may make such order for the disposal of the air weapon as the sheriff considers appropriate.

40 (8) Subsection (9) applies where—

(a) an air weapon is surrendered in pursuance of—

- (i) a notice given under section 11(3) which revokes an individual's air weapon certificate, or
- (ii) a notice given under section 16(1) which revokes an individual's police permit or visitor permit, and

5

(b) the individual—

- (i) does not appeal against the decision to revoke the individual's air weapon certificate, police permit or, as the case may be, visitor permit, or
- (ii) makes and subsequently withdraws an appeal against such a decision.

(9) Where this subsection applies, the air weapon is to be disposed of—

10

- (a) in such manner as the chief constable and the owner of the weapon may agree, or
- (b) in default of such agreement, in such manner as the chief constable may decide.

(10) Where the chief constable decides to dispose of an air weapon under subsection (9)(b), the chief constable must give the owner notice of the decision.

Offences

15

31 Failure to keep air weapons secure or to report loss to police

(1) It is an offence for a person—

- (a) to fail to take reasonable precautions for the safe custody of an air weapon possessed by the person, or
- (b) to fail to report immediately to the chief constable the loss or theft of an air weapon possessed by the person.

20

(2) A person who commits an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

32 False statements, certificates and permits

(1) It is an offence for an individual to knowingly or recklessly make any statement which is false in any material particular for the purposes of procuring (either personally or for another person)—

25

- (a) the grant, renewal or variation of an air weapon certificate,
- (b) the grant or variation of a police or visitor permit,
- (c) the grant of an event permit, or
- (d) the grant, renewal or variation of an approval of an air weapon club.

30

(2) It is an offence for an individual, with a view to purchasing, acquiring or procuring the repair or testing of an air weapon—

- (a) to produce a false air weapon certificate, police permit or visitor permit,
- (b) to produce an air weapon certificate, police permit or visitor permit which has been improperly altered, or
- (c) to knowingly or recklessly make a statement which is false in a material particular.

35

- (3) An individual who commits an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

33 Time limit for offences

5 Section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences) applies to an air weapon offence which is triable only summarily as if the references in subsection (1) of that section to 6 months were to 36 months (and subsection (2) of that section were omitted).

34 Offences by bodies corporate etc.

- 10 (1) Subsection (2) applies where—
- (a) an offence under this Part has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - 15 (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual.
- 20 (2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or similar officer of the body,
 - 25 (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a limited liability partnership, a member,
 - (c) in relation to a Scottish partnership, a partner,
 - (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

30 *General*

35 Appeals

- (1) A person aggrieved by a decision of the chief constable under a section listed in subsection (2) may appeal against the decision to the appropriate sheriff.
- (2) The sections are—
- 35 (a) section 5(1) (grant or renewal of air weapon certificate),
 - (b) section 6(2) (air weapon certificates: conditions),

- (c) section 7(3)(b) (special requirements and conditions for young person's air weapon certificate),
- (d) section 10(1) (variation of air weapon certificate),
- (e) section 11(1)(a) or (2) (revocation of air weapon certificate),
- 5 (f) section 12(1) (police permits),
- (g) section 13(1) or (6) (visitor permits),
- (h) section 14(3)(b) or (4)(b) (visitor permits: young persons),
- (i) section 15(2) (police and visitor permits: conditions),
- (j) section 16(1) (police and visitor permits: variation and revocation),
- 10 (k) section 17(1) or (2) (event permits),
- (l) section 18(1), (3) or (5) (approval of air weapon clubs),
- (m) section 19(1) (variation of approval for air weapon club),
- (n) section 30(9)(b) (forfeiture and disposal of air weapons).

15 (3) An appeal must be made within the period of 21 days beginning with the date on which the decision appealed against was made.

(4) An appeal under this section is to be determined on the merits (and not by way of review).

(5) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the chief constable made the decision appealed against.

20 (6) On determining the appeal, the sheriff may—

(a) dismiss the appeal,

(b) give the chief constable such direction as the sheriff considers appropriate as respects the matter which is the subject of the appeal.

(7) The decision of the sheriff may be appealed against only on a point of law.

25 (8) In this section, “the appropriate sheriff” means—

(a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or

(b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.

30 **36 Fees**

(1) The Scottish Ministers may by regulations make provision for the charging of fees by the chief constable—

(a) in respect of applications under this Part, and

35 (b) otherwise in respect of the performance of functions by the chief constable under this Part.

(2) Regulations under subsection (1) may—

(a) specify different fees for different circumstances,

(b) specify circumstances in which no fee is payable,

(c) provide for fees to be determined by reference to such factors (including the value of money) as may be specified in the regulations.

(3) Where regulations under subsection (1) provide for a fee to be charged in respect of an application under this Part, the application is valid only when the fee is paid.

5 (4) Nothing in this section limits the generality of section 75.

37 Power to make further provision

(1) The Scottish Ministers may by regulations make further provision for the purposes of this Part.

10 (2) Without limiting that generality (or the generality of section 75), regulations under subsection (1) may—

(a) make provision about the application processes under this Part (for example, prescribing the form and content of applications, any required supporting documentation or making further provision about the verification of applications),

15 (b) make provision in relation to air weapon certificates, police permits, visitor permits, event permits and approvals of air weapon clubs (for example, prescribing their form and content or the conditions which may or must be attached to them).

38 Transitional arrangements for existing certificate holders

20 (1) This section applies where, on the day on which section 2(1) comes into force, a person aged 14 years or more holds a firearm certificate or a shot gun certificate (“the existing certificate”).

(2) It is not an offence under section 2(1) for the person to use and possess an air weapon without holding an air weapon certificate for the duration of the transitional period.

(3) The person must, in relation to such use or possession, comply with—

25 (a) any prescribed mandatory conditions which apply to the use and possession of air weapons, and

(b) if the person is under the age of 18, the conditions mentioned in section 7(5).

(4) A person who fails to comply with a condition mentioned in subsection (3) commits an offence.

30 (5) But it is not an offence under subsection (4) for a person to fail to comply with a condition mentioned in subsection (3) if—

(a) the person is entitled to use or possess an air weapon by virtue of an exemption under schedule 1, and

35 (b) the failure relates to the use or possession of an air weapon in accordance with the exemption.

(6) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(7) In this section, the “transitional period” means, in relation to an existing certificate, the period—

40 (a) beginning with the day on which section 2(1) comes into force, and

(b) ending with (the earlier of)—

- (i) the day on which the existing certificate is, or falls to be, renewed, or
- (ii) the day on which the existing certificate is surrendered, cancelled or revoked.

5 (8) For the purposes of subsection (7)(b)(i), where a person holds both a firearm certificate and a shot gun certificate, the existing certificate is the certificate which is, or which falls to be, renewed later.

(9) For the purposes of subsection (7)(b)(ii), where a person holds both a firearm certificate and a shot gun certificate—

- 10 (a) the surrender of one of the certificates does not end the transitional period, but
(b) the cancellation or revocation of either certificate ends the transitional period.

(10) For the purposes of paragraph 16 of schedule 1, this section is to be treated as if it were an exemption under that schedule.

39 Guidance

15 (1) The chief constable must, in exercising any function under this Part, have regard to any guidance issued by the Scottish Ministers.

(2) The Scottish Ministers must publish any guidance they issue for the purposes of this Part.

(3) The Scottish Ministers may revise and revoke such guidance.

40 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 1968 Act” means the Firearms Act 1968,

“acquire” means hire, accept as a gift or borrow and “acquisition” is to be construed accordingly,

25 “air weapon” is to be construed in accordance with section 1,

“air weapon certificate” means an air weapon certificate granted under section 5(1),

“air weapon club” means an association of individuals which has as a purpose the activity of target shooting with air weapons,

30 “air weapon offence” means any offence under this Part,

“approval”, in relation to an air weapon club, means an approval granted to the club under section 18(1),

“approved air weapon club” means an air weapon club which has been granted an approval by the chief constable under section 18(1),

35 “chief constable” means the chief constable of the Police Service of Scotland,

“condition” includes requirement and restriction,

“constable” has the meaning given in section 99(1) of the Police and Fire Reform (Scotland) Act 2012,

“event permit” means a permit granted under section 17(1),

“firearm certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

“guardian”, in relation to an individual, means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the individual,

5 “member of police staff” means an individual appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012,

“member of staff of the Scottish Police Authority” means an individual appointed under paragraph 6(1) of schedule 1 to the Police and Fire Reform (Scotland) Act 2012,

10 “miniature rifle range” is to be construed in accordance with section 11 of the 1968 Act,

“museum” means a museum or similar institution which has as its purpose, or one of its purposes, the preservation for the public benefit of a collection of historical, artistic or scientific interest which is maintained wholly or mainly out of money provided by Parliament, a Minister of the Crown, the Scottish Ministers or a local authority,

“police permit” means a permit granted under section 12(1),

“premises” means any place and includes a vehicle, vessel or moveable structure,

“prescribed” means prescribed in regulations made under section 37,

20 “registered firearms dealer” means a person registered as a firearms dealer under section 33 of the 1968 Act,

“relative”, in relation to an individual, means—

25 (a) the spouse, civil partner, parent, stepparent, child, stepchild, grandparent or grandchild of the individual or of the individual’s spouse, former spouse, civil partner or former civil partner, or

(b) the sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood or by affinity) of the individual or the individual’s spouse, former spouse, civil partner or former civil partner,

30 and includes, in relation to an individual who is living or has lived with another individual as if they were spouses or civil partners, any individual who would fall within paragraph (a) or (b) if the parties were married or civilly partnered to each other,

“shot gun certificate” is to be construed in accordance with section 57(4) of the 1968 Act,

35 “transfer” includes let on hire, give, lend and part with possession,

“visitor permit” means a permit granted under section 13(1).

(2) In this Part, a reference to an individual holding an air weapon certificate, a police permit or a visitor permit is a reference to an individual holding an air weapon certificate, police permit or, as the case may be, visitor permit—

40 (a) granted to the individual under section 5, 12 or, as the case may be, 13 and

(b) which has not expired or been revoked or cancelled.

(3) In this Part, a reference to a condition attached to an air weapon certificate, police permit, visitor permit, event permit or approval of an air weapon club includes a reference to any condition to which the certificate, permit or as the case may be, approval is subject by virtue of this Act.

5 (4) Any expression used in this Part which is also used in an Act listed in subsection (5) is, unless the context otherwise requires, to be construed in accordance with any decisions or opinions of a court interpreting the expression for the purposes of the Act.

(5) The Acts are—

(a) the 1968 Act,

10 (b) the Firearms (Amendment) Act 1988, and

(c) the Firearms (Amendment) Act 1997.

PART 2

ALCOHOL LICENSING

Licensing objectives

15 **41 Licensing objectives: protecting young persons from harm**

In section 4 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) (the licensing objectives), in subsection (1)(e), after “children” insert “and young persons”.

Statements of licensing policy

20 **42 Statements of licensing policy: licensing policy periods**

In section 6 of the 2005 Act (statements of licensing policy)—

(a) in subsection (1), for “3 year period” substitute “licensing policy period”,

(b) in subsection (2), for “3 year period” substitute “licensing policy period”,

(c) after subsection (3) insert—

25 “(3ZA)A Licensing Board may, in preparing a licensing policy statement, decide that the licensing policy period to which the statement relates is to begin on a date earlier than it otherwise would under subsection (7).

(3ZB)Where a Licensing Board make a decision under subsection (3ZA) they must, when publishing the licensing policy statement under subsection (6), publicise the date on which they have decided the licensing policy period is to begin.”,

30 (d) in subsection (4), for “3 year period” substitute “licensing policy period”,

(e) for subsection (7) substitute—

“ (7) Subject to subsection (3ZA), in this section, “licensing policy period” means the period between each relevant date.

35 (8) For the purposes of subsection (7), “relevant date” means the date occurring 18 months after an ordinary election of councillors for local government areas takes place under section 5 of the Local Government etc. (Scotland) Act 1994.”.

*Fit and proper person test***43 Premises licence application: ground for refusal**

(1) Section 23 of the 2005 Act (determination of premises licence application) is amended as follows.

(2) In subsection (5)—

(a) after paragraph (b) insert—

“(ba) that the Licensing Board consider, having regard to the licensing objectives, that the applicant is not a fit and proper person to be the holder of a premises licence.”,

(b) in paragraph (c), after “would” insert “otherwise”.

(3) In subsection (8)(b), for “(5)(c)” substitute “(5)(ba) or (c)”.

44 Application to transfer premises licence: ground for refusal

(1) The 2005 Act is amended as follows.

(2) In section 33 (transfer on application of licence holder)—

(a) after subsection (7) insert—

“(7A) On giving a notice under subsection (6)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to—

(a) the transferee, or

(b) 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.”,

(b) in subsection (8)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after paragraph (b) insert “, and

(c) no information has been provided under subsection (7A).”,

(c) in subsection (10)—

(i) after “notice” insert “and any information provided under subsection (7A)”,

(ii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

(d) after subsection (10) insert—

“(11) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

(3) In section 34 (transfer on application of person other than licence holder), in subsection (4), for “(10)” substitute “(11)”.

45 Ground for review of premises licence

- (1) The 2005 Act is amended as follows.
- (2) In section 36 (application for review of premises licence)—
- (a) in subsection (3), before paragraph (a) insert—
- 5 “(za) that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence,”
- (b) in subsection (5), before paragraph (a) insert—
- 10 “(za) where the ground is that specified in subsection (3)(za), a summary of the information on which the applicant’s view that the alleged ground applies is based,”
- (3) In section 37 (review of premises licence on Licensing Board’s initiative), in subsection (4), before paragraph (a) insert—
- 15 “(za) where the ground is that specified in section 36(3)(za), a summary of the information on which the Board’s view that the alleged ground applies is based,”
- (4) In section 39 (Licensing Board’s powers on review)—
- (a) after subsection (1), insert—
- “(1A) Subsection (1) is subject to subsection (2A).”,
- (b) after subsection (2), insert—
- 20 “(2A) Where, at a review hearing in relation to any premises licence, the Licensing Board are satisfied that the ground for review specified in section 36(3)(za) is established, the Board must revoke the licence.”
- (5) In section 39A (notification of determinations), in subsection (1)—
- (a) the word “or” immediately following paragraph (a) is repealed,
- 25 (b) after paragraph (b), insert “, or
- (c) decides to revoke a premises licence under section 39(2A).”
- (6) In Part 1 of schedule 5 (appeals to the sheriff principal), in the entry in the left-hand column relating to a decision under section 39(1), after “39(1)” insert “or (2A)”.

46 Personal licence applications and renewals: ground for refusal

- 30 (1) The 2005 Act is amended as follows.
- (2) In section 73 (notification of application to the chief constable), after subsection (4) insert—
- 35 “(5) On giving a notice under subsection (3)(a) or (b), the chief constable may also provide to the Licensing Board any information in relation to the applicant that the chief constable considers may be relevant to consideration by the Board of the application.”
- (3) After section 73 of the 2005 Act insert—

“73A Notification of application to Licensing Standards Officer

(1) Where a Licensing Board receive a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board’s area.

(2) A Licensing Standards Officer may, within 21 days of the date of receipt of a notice under subsection (1), respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration by the Board of the application.”.

(4) In section 74 (determination of personal licence application)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) no information has been provided under section 73(5) or 73A(2),”,

(b) after subsection (5A) insert—

“(5AA) If—

(a) all of those conditions are met in relation to the applicant,

(b) the notice received from the chief constable under subsection (3)(a) or (b) of section 73 does not include a recommendation under subsection (4) of that section, and

(c) information has been provided under subsection (5) of that section or under section 73A(2),

the Board may hold a hearing for the purpose of considering and determining the application.”,

(c) in subsection (5B), after “(5A)” insert “or (5AA)”,

(d) in subsection (6)—

(i) for “(5) or (5A)” substitute “(5), (5A) or (5AA)”,

(ii) after “notice” insert “and any information provided under section 73(5) or 73A(2)”,

(iii) in paragraph (a), for the words from “it” to “objectives” substitute “a ground for refusal applies”,

(e) after subsection (6) insert—

“(6A) The grounds for refusal are—

(a) that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a personal licence,

(b) that it is otherwise necessary to refuse the application for the purposes of any of the licensing objectives.”.

(5) In section 78 (renewal of personal licence), in subsection (5), for “73 and 74” substitute “73, 73A and 74”.

47 Personal licence holders: procedure on receipt of notice of conviction

(1) The 2005 Act is amended as follows.

(2) In section 83 (procedure where Licensing Board receive notice of conviction)—

(a) after subsection (8), insert—

“(8A) Subsection (8) is subject to subsection (9A).”,

(b) after subsection (9), insert—

“(9A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”,

(c) in subsection (10), after “(9)” insert “or (9A)”.

(3) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “83(9)” substitute “83(9) or (9A)”.

48 Personal licence holders: conduct inconsistent with the licensing objectives

(1) The 2005 Act is amended as follows.

(2) In section 84 (conduct inconsistent with the licensing objectives)—

(a) after subsection (6), insert—

“(6A) Subsection (6) is subject to subsection (7A).”,

(b) after subsection (7), insert—

“(7A) Where, at the hearing, the Licensing Board are satisfied that, having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a personal licence, the Board must make an order revoking the licence.”,

(c) in subsection (8), after “(7)” insert “or (7A)”.

(3) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(6), (7)” substitute “(6), (6A), (7), (7A)”.

(4) In Part 2 of schedule 5 (appeals to the sheriff), in the entry in the left-hand column relating to a decision to make an order under section 83(9), 84(7) or 86(3), for “84(7)” substitute “84(7) or (7A)”.

Relevant offences and foreign offences

49 Premises licences: procedure in relation to relevant offences or foreign offences

In section 44 of the 2005 Act (procedure where Licensing Board receive notice of conviction in relation to a premises licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5)”,

(b) after subsection (7) insert—

“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) make a premises licence review proposal in respect of the premises licence, or

(b) decide to take no further action in relation to the conviction.”.

50 Personal licences: procedure in relation to relevant offences or foreign offences

In section 83 of the 2005 Act (procedure where Licensing Board receive notice of a conviction in relation to a personal licence)—

(a) in subsection (7), after “subsection (4)(b)” insert “which includes a recommendation under subsection (5)”,

(b) after subsection (7) insert—

“(7A) If the Licensing Board receive from the chief constable a notice under subsection (4)(b) which does not include a recommendation under subsection (5), the Licensing Board must—

(a) hold a hearing, or

(b) decide to take no further action in relation to the conviction.”,

(c) in subsection (8), for “the hearing” substitute “a hearing under subsection (7) or (7A)(a)”.

51 Relevant offences and foreign offences: spent convictions

In section 129 of the 2005 Act (relevant offences and foreign offences), subsection (4) is repealed.

*Supply of alcohol to a child or young person***52 Offences of supplying alcohol to a child or young person**

(1) After section 104 of the 2005 Act insert—

“104A Supply of alcohol to a child

(1) A person, other than a child or young person, who—

(a) buys or attempts to buy alcohol—

(i) on behalf of a child, or

(ii) for a child, or

(b) gives alcohol (or otherwise makes it available) to a child, commits an offence.

(2) Subsection (1)(a)(ii) and (b) does not apply to the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a child—

(a) for consumption other than in a public place, or

(b) for the purposes of religious worship.

(3) In subsection (2)(a), “public place” includes—

(a) relevant premises,

(b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and

(c) any place to which the public do not have access but to which the child unlawfully gains access.

(4) A person who commits an offence under subsection (1) is liable on summary conviction to—

- (a) a fine not exceeding level 5 on the standard scale,
- (b) imprisonment for a term not exceeding 3 months, or
- (c) both.

104B Supply of alcohol to a young person

- 5 (1) A person, other than a child or young person, who knowingly—
- (a) buys or attempts to buy alcohol—
 - (i) on behalf of a young person, or
 - (ii) for a young person, or
 - (b) gives alcohol (or otherwise makes it available) to a young person,
- 10 commits an offence.
- (2) Subsection (1)(a)(ii) and (b) does not apply to—
- (a) the buying of alcohol for, or (as the case may be) giving or making available of alcohol to, a young person—
 - (i) for consumption other than in a public place, or
 - 15 (ii) for the purposes of religious worship, or
 - (b) the buying, or (as the case may be) giving or making available, of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.
- (3) In subsection (2)(a)(i), “public place” includes—
- 20 (a) relevant premises,
 - (b) any place to which the public have access for the time being (whether on payment of a fee or otherwise), and
 - (c) any place to which the public do not have access but to which the young person unlawfully gains access.
- 25 (4) A person who commits an offence under subsection (1) is liable on summary conviction to—
- (a) a fine not exceeding level 5 on the standard scale,
 - (b) imprisonment for a term not exceeding 3 months, or
 - (c) both.”.
- 30 (2) In section 105 of the 2005 Act (purchase of alcohol by or for a child or young person)—
- (a) subsections (4), (5) and (7) are repealed,
 - (b) the section title becomes “**Purchase of alcohol by a child or young person**”.

Miscellaneous

53 Meaning of “alcohol”: inclusion of angostura bitters

- 35 In section 2 of the 2005 Act (meaning of “alcohol”), in subsection (1)(b), paragraph (iv) is repealed.

54 Overprovision

- (1) The 2005 Act is amended as follows.
- (2) In section 7 (duty to assess overprovision)—
- 5 (a) in subsection (2), after “Act” insert “and in doing so the Board may determine that the whole of the Board’s area is a locality”,
- (b) in subsection (3)—
- (i) the word “must” is repealed,
- (ii) for paragraph (a) substitute—
- 10 “(a) may have regard to (among other things) the number, capacity and licensed hours of licensed premises in the locality,”,
- (iii) at the beginning of paragraph (b) insert “must”.
- (3) In section 23(5)(e) (refusal of premises licence on grounds of overprovision), for “and capacity” substitute “, capacity and licensed hours”.
- (4) In section 30(5)(d) (refusal to vary premises licence on grounds of overprovision), for
- 15 “and capacity” substitute “, capacity and licensed hours”.

55 Duty of Licensing Boards to produce annual financial report

- (1) The 2005 Act is amended as follows.
- (2) After section 9 insert—

“9A Annual financial report

- 20 (1) Each Licensing Board must prepare and publish a report not later than 3 months after the end of each financial year.
- (2) A report under this section must include—
- (a) a statement of—
- 25 (i) the amount of relevant income received by the Licensing Board during the financial year, and
- (ii) the amount of relevant expenditure incurred in respect of the Board’s area during the year, and
- (b) an explanation of how the amounts in the statement were calculated.
- (3) For the purposes of subsection (2)—
- 30 “relevant income”, in relation to a Licensing Board, means income received by the Board in connection with the exercise of the Board’s functions under or by virtue of—
- (a) this Act, or
- (b) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and
- 35 “relevant expenditure”, in relation to a Licensing Board, means any expenditure—

(a) which is attributable to the exercise of the Board’s functions under or by virtue of—

(i) this Act, or

(ii) section 14(1) of the Alcohol etc. (Scotland) Act 2010 (social responsibility levy) in so far as relating to holders of premises licences or occasional licences, and

(b) which is incurred by—

(i) the Board,

(ii) the relevant council, or

(iii) the Licensing Standards Officer (or Officers) for the Board’s area.

(4) A report under this section may also include such other information about the exercise of the Licensing Board’s functions as they consider appropriate.

(5) At the request of a Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section.

(6) The Scottish Ministers may by regulations make further provision about reports under this section including provision—

(a) about the form and content of reports including, in particular—

(i) how a statement required under subsection (2) is to be set out, and

(ii) what constitutes relevant income and relevant expenditure for the purposes of subsection (2), and

(b) the publication of reports.

(7) Regulations under subsection (6)(a) may modify subsection (3).

(8) In this section, “financial year” means a yearly period ending on 31 March.”.

(3) In section 146 (orders and regulations: affirmative procedure),

(a) in subsection (4)(c), after “applies,” insert “regulations under section 9A(6) or”,

(b) in subsection (5), before paragraph (a) insert—

“(za) regulations under section 9A(6) containing provisions which add to, replace or omit any part of the text of subsection (3) of that section.”.

56 Interested parties

(1) The 2005 Act is amended as follows.

(2) In section 40A (connected persons and interested parties: licence holder’s duty to notify changes)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) in subsection (2), the words “or an interested party” are repealed,

(c) the section title becomes “**Connected persons: licence holder’s duty to notify changes**”.

(3) The italic cross heading preceding section 40A becomes “*Connected persons*”.

(4) In section 48(1)(c) (notification of change of name or address)—

(a) the word “or” immediately following sub-paragraph (i) is repealed,

(b) sub-paragraph (ii) is repealed.

(5) In section 147(5) (interpretation), in the opening words, the words “nor the premises manager” are repealed.

57 Personal licences: grant, duration and renewal

(1) The 2005 Act is amended as follows.

(2) In section 74 (determination of personal licence application), in subsection (3)(c), after “revoked” insert “under any provision of this Act other than section 87(3)”.

(3) In section 77 (period of effect of personal licence), in subsection (8), for “3” substitute “9”.

(4) In section 78 (renewal of personal licence), in subsection (2)—

(a) for “2” substitute “9”,

(b) for “3” substitute “12”.

(5) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives), in subsection (3), for “(8)(a)” substitute “(8)”.

58 Processing and deemed grant of applications

(1) The 2005 Act is amended as follows.

(2) After section 134 insert—

“134ZA Duty to acknowledge applications

(1) This section applies where a Licensing Board receive a relevant application.

(2) In a case where the Licensing Board are satisfied that the application meets the prescribed requirements they must, unless subsection (3) applies, give an acknowledgement to the applicant—

(a) confirming that they are satisfied that the application meets the prescribed requirements,

(b) listing any documents received in support of the application and the date or dates on which the documents were received by them, and

(c) informing the applicant about the period for determining the application under section 134ZB.

(3) This subsection applies where the Licensing Board consider it appropriate to determine the application on its merits without first giving an acknowledgement to the applicant.

(4) In a case where the Licensing Board are not satisfied that the application meets the prescribed requirements, they must give a notice to the applicant—

- (a) indicating that they are treating the application as incomplete and not having been made, and
- (b) stating their reasons for treating the application in that way.
- (5) Subsection (4) does not prevent an applicant from submitting further information in support of the application if that is otherwise competent.
- (6) A Licensing Board must give an acknowledgement under subsection (2) or give a notice under subsection (4) as soon as is practicable.
- (7) For the purposes of this section, “prescribed requirements”, in relation to a relevant application, means the requirements (as to form, content, etc.) which are imposed by or under this Act or any other enactment in respect of the type of relevant application in question.
- (8) In this section, a “relevant application” is—
- (a) a premises licence application,
- (b) a premises licence variation application,
- (c) an application under section 33(1) or 34(1) to transfer a premises licence,
- (d) an application under section 35(1) for variation of a premises licence on transfer,
- (e) a provisional premises licence application,
- (f) an application under section 46 for confirmation of a provisional premises licence,
- (g) an application under section 47(2) for a temporary premises licence,
- (h) an occasional licence application,
- (i) an extended hours application,
- (j) a personal licence application,
- (k) a personal licence renewal application.

134ZB Period for determination of applications

- (1) A Licensing Board must determine every relevant application which meets the prescribed requirements (including an application mentioned in subsection (2)) before the end of the period of 9 months beginning with (the later of)—
- (a) the date on which the Licensing Board received the application, or
- (b) where the application did not initially meet the prescribed requirements, the date on which the application met the prescribed requirements.
- (2) Where a Licensing Board consider it appropriate to determine a relevant application without first giving an acknowledgement under section 134ZA(2), they must determine the application as soon as is practicable.
- (3) A sheriff of the appropriate sheriffdom may, on an application by a Licensing Board in relation to a relevant application, extend the period for determining the application under subsection (1).
- (4) The sheriff may extend the period only if—
- (a) it appears to the sheriff that there is a good reason to do so, and

- (b) no previous extension has been granted in relation to the relevant application.
- (5) The applicant in relation to a relevant application is entitled to be a party to proceedings on an application to a sheriff under subsection (3).
- 5 (6) In this section—
“prescribed requirements” has the same meaning as in section 134ZA,
“relevant application” has the same meaning as in section 134ZA.

134ZC Deemed grant of applications

- 10 (1) Subsection (2) applies where a Licensing Board have failed to determine a relevant application before the expiry of the determination period.
- (2) Where this subsection applies—
- (a) the application is deemed to have been granted on the date on which the determination period expired, and
- 15 (b) the deemed grant of the application has the same effect, for the purposes of this Act, as if the application had been granted by the Licensing Board.
- (3) A Licensing Board may not impose any conditions (other than those which they must impose under this Act) in respect of an application which is deemed to have been granted under subsection (2).
- 20 (4) Subsection (5) applies in relation to an application—
- (a) that is deemed to have been granted under subsection (2), and
- (b) in respect of which the Licensing Board must, on granting such an application, determine the period during which the thing applied for is to have effect.
- 25 (5) The thing applied for is to have effect for the duration of the period stated in the application (subject to any limits imposed by this Act).
- (6) In this section—
- 30 “determination period” means, in relation to a relevant application, the period for determining the application under section 134ZB(1) including (if applicable) any extension to that period granted under subsection (3) of that section,
“prescribed requirements” has the same meaning as in section 134ZA,
“relevant application” has the same meaning as in section 134ZA.”

59 Form etc. of communications under the 2005 Act

- 35 (1) Section 134 of the 2005 Act (form etc. of applications, proposals and notices) is amended as follows.
- (2) In each of the following provisions, for “or notice” substitute “, notice or other communication”, namely—
- (a) subsection (1)(a) and (d), and
- 40 (b) subsection (2).

- (3) The section title becomes “**Form etc. of applications, proposals, notices and other communications**”.

PART 3

CIVIC LICENSING

Taxis and private hire cars

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

In section 10 of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) (taxi and private hire car licences), after subsection (3) insert—

“(3A) Without prejudice to paragraph 5 of Schedule 1, the grant of a private hire car licence may be refused by a licensing authority if, but only if, they are satisfied that there is (or, as a result of granting the licence, would be) overprovision of private hire car services in the locality (or localities) in their area in which the private hire car is to operate.

(3B) It is for the licensing authority to determine the localities within their area for the purposes of subsection (3A) and in doing so the authority may determine that the whole of their area is a locality.

(3C) In satisfying themselves as to whether there is or would be overprovision for the purposes of subsection (3A) in any locality, the licensing authority must have regard to—

- (a) the number of private hire cars operating in the locality, and
- (b) the demand for private hire car services in the locality.”.

61 Testing of private hire car drivers

In section 13 of the 1982 Act (taxi and private hire car driving licences), in subsection (5)—

- (a) after “licence” where first occurring insert “or a private hire car driver’s licence”,
- (b) after “taxi” where second occurring insert “or, as the case may be, private hire car”.

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

(1) Section 22 of the 1982 Act (saving for certain vehicles etc.) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) Paragraph (c) of that subsection is repealed.

(4) After that subsection, insert—

“(2) The Scottish Ministers may by regulations specify further circumstances in which sections 10 to 21 (with the exception of subsection (7) of section 21) are not to apply.

(3) Regulations under subsection (2)—

- (a) may make transitional, transitory and saving provision,

(b) are subject to the negative procedure.”.

- (5) The title to section 22 becomes “**Exemptions**”.

Metal dealers

63 Removal of exemption warrants for certain metal dealers

- 5 (1) The 1982 Act is amended as follows.
- (2) In section 28 (metal dealers: licensing and regulation)—
- (a) in subsection (1), for the words “Subject to subsection (2) below, a” substitute “A”,
- (b) subsections (2) and (3) are repealed.
- 10 (3) Section 29 (metal dealers’ exemption warrants) is repealed.

64 Abolition of requirement to retain metal for 48 hours

Section 31 of the 1982 Act (retention of metal) is repealed.

65 Acceptable forms of payment for metal

After section 33 of the 1982 Act insert—

- 15 “**33A Acceptable forms of payment for metal**
- (1) A metal dealer or an itinerant metal dealer may pay for metal only by a method of payment specified in subsection (2).
- (2) The methods of payment are—
- 20 (a) by means of a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
- (b) by electronic transfer of funds to an account in the name of the payee.
- (3) If a metal dealer or an itinerant metal dealer pays for metal otherwise than in accordance with subsection (1), the dealer and each of the persons listed in subsection (4) (if any) commit an offence.
- 25 (4) The persons are—
- (a) in a case of payment being made by a metal dealer at a place of business of the dealer, the person with day to day management of the place,
- (b) in any case, any person who, acting on behalf of the metal dealer or the itinerant metal dealer, makes the payment.
- 30 (5) It is a defence for a metal dealer, an itinerant metal dealer or a person described in subsection (4)(a) who is charged with an offence under this section to prove that the dealer or, as the case may be, person—
- (a) made arrangements to ensure that the payment was to be made only in accordance with subsection (1), and
- 35 (b) took all reasonable steps to ensure that those arrangements were complied with.

- (6) A person who commits an offence under this section is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.
- (7) The Scottish Ministers may by regulations—
- (a) amend subsection (2) so as to add, amend or remove methods of payment, and
- (b) make such consequential modification of section 33B(3) as they consider appropriate.
- (8) Regulations under subsection (7) are subject to the affirmative procedure.
- (9) In this section, “place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer’s business as a metal dealer.”.

66 Metal dealers and itinerant metal dealers: records

- (1) The 1982 Act is amended as follows.
- (2) Sections 30 (keeping of records) and 33 (receipts and invoices: itinerant metal dealers) are repealed.
- (3) After section 33A (as inserted by section 65 of this Act), insert—

“33B Requirement to keep records

- (1) This section applies where a metal dealer or an itinerant metal dealer (“the dealer”), in the course of the dealer’s business—
- (a) acquires any metal (whether or not for value), or
- (b) processes or disposes of any metal (by any means).
- (2) In respect of any metal acquired, the dealer must record the following information—
- (a) the description and weight of the metal,
- (b) the date and time of the acquisition of the metal,
- (c) if the metal is acquired from another person—
- (i) the name and address of the person,
- (ii) the means by which the person’s name and address was verified,
- (d) the price, if any, payable in respect of the acquisition of the metal, if that price has been ascertained at the time when the entry in the record relating to that metal is to be made,
- (e) the method of payment of the price (if applicable),
- (f) where no price is payable for the metal, the value of the metal at the time when the entry is to be made as estimated by the dealer,
- (g) in the case of metal delivered to the dealer by means of a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) borne by the vehicle.
- (3) Where the dealer has paid for metal, the dealer must keep a copy of—
- (a) the cheque, or
- (b) the document evidencing the electronic transfer of funds.

- (4) In respect of any metal processed or disposed of, the dealer must record the following information—
- (a) the description and weight of the metal immediately before its processing or disposal,
 - 5 (b) the date of the processing or disposal of the metal,
 - (c) in the case of metal which is processed, the process applied,
 - (d) in the case of metal disposed of by sale or exchange—
 - 10 (i) the consideration for which it is sold or exchanged,
 - (ii) the name and address of the person to whom the metal is sold or with whom it is exchanged, and
 - (iii) the means by which the person's name and address was verified,
 - (e) in the case of metal disposed of otherwise than by sale or exchange, its value immediately before its disposal as estimated by the dealer.
- (5) The dealer must—
- 15 (a) keep separate records in relation to—
 - (i) metal acquired, and
 - (ii) metal processed or disposed of,
 - (b) record the information immediately after the metal is acquired, processed or disposed of,
 - 20 (c) keep a copy of any document produced by a person to verify that person's name or address, and
 - (d) retain information recorded or documents kept under this section for a period of not less than 3 years beginning with the date on which the information was recorded or document obtained.
- (6) The Scottish Ministers may by regulations require further information to be recorded about any metal acquired, processed or disposed of by metal dealers or itinerant metal dealers.
- (7) Regulations under subsection (6)—
- 25 (a) may make different provision for different purposes, and
 - 30 (b) are subject to the negative procedure.

33C Form of records

- (1) A metal dealer or an itinerant metal dealer (“a dealer”) must record the required information—
- 35 (a) in books with serially numbered pages, or
 - (b) by means of a device for storing and processing information.
- (2) Where a dealer records the required information in books, the dealer must use separate books for recording the required information about—
- (a) metal acquired, and
 - (b) metal processed or disposed of.

(3) Where a dealer uses a device for storing and processing information, the dealer must, by means of the device or otherwise, keep details of all modifications made in the records kept by the device.

(4) Where a dealer is required to keep a copy of a document under section 33B, it is sufficient for the dealer—

(a) to keep an electronic copy of the document, and

(b) in relation to a document verifying a person's name or address, keep only one copy of the document.

(5) In this section, “required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).

33D Metal dealer to keep records for each place of business

(1) A metal dealer must keep separate records of the required information in relation to—

(a) each place of business operated by the dealer, and

(b) any metal acquired, processed or disposed of otherwise than at such a place of business.

(2) Where a metal dealer records the required information in books, the dealer must not, at any time at a place of business, use more than—

(a) one book for recording the required information about metal acquired, and

(b) one book for recording the required information about metal processed or disposed of.

(3) In this section—

“place of business” means a place of business operated by a metal dealer in the ordinary course of that dealer's business as a metal dealer,

“required information” means the information about metal acquired, processed or disposed of that a dealer is required to record under or by virtue of section 33B(2), (4) or (6).”.

(4) In section 34 (offences relating to metal dealing)—

(a) after subsection (2) insert—

“(2A) Any metal dealer or itinerant metal dealer who fails to comply with a requirement of section 33B, 33C or 33D commits an offence and is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.”,

(b) in subsection (3), for the words from “furnishes” to “keep” substitute “produces any information or document which the dealer is required to record or keep under section 33B which is false or misleading in a material particular”.

Public entertainment venues

67 Licensing of theatres etc.

(1) In section 41 of the 1982 Act (public entertainment licences)—

(a) in subsection (2)(d), the words “the Theatres Act 1968, or” are repealed,

(b) after subsection (3) insert—

“(3A) In relation to a public entertainment licence which authorises the use of premises for the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(3B) Subsection (3A) does not prevent a licensing authority from attaching, by virtue of section 3B or in accordance with subsection (3) or paragraph 5 of Schedule 1, any condition which they consider appropriate on the grounds of public safety.”.

(2) In section 1 of the Theatres Act 1968 (“the 1968 Act”) (abolition of censorship of the theatre), subsection (2) is repealed.

(3) Sections 12 to 14 of the 1968 Act (licensing of premises for public performances of plays) are repealed.

(4) In section 15 of the 1968 Act (powers of entry and inspection)—

(a) in subsection (1)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(iii) the words “or, in a case falling within paragraph (b) above, any police officer or authorised officer of the licensing authority” are repealed,

(iv) paragraph (ii) is repealed,

(b) subsections (2), (3), (5) and (6) are repealed.

(5) In section 18 of the 1968 Act (interpretation), in subsection (1), the definition of “licensing authority” is repealed.

(6) Schedule 1 to the 1968 Act (provision about licenses to perform plays) is repealed.

Sexual entertainment venues

68 Licensing of sexual entertainment venues

(1) The 1982 Act is amended as follows.

(2) In section 41(2) (definition of place of public entertainment), after paragraph (aa) insert—

“(ab) a sexual entertainment venue (as defined in section 45A) in relation to which Schedule 2 (as modified for the purposes of section 45B) has effect, while being used as such;”.

(3) After section 45 insert—

“45A Licensing of sexual entertainment venues: interpretation

(1) This section applies for the purposes of the interpretation of section 45B and Schedule 2 (as modified for the purposes of section 45B).

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

(3) For the purposes of that definition—

“audience” includes an audience of one,

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

“organiser”, in relation to the provision of sexual entertainment in premises, means—

(a) the person (“A”) who is responsible for—

(i) the management of the premises, or

(ii) the organisation or management of the sexual entertainment,
or

(b) where A exercises that responsibility on behalf of another person (whether by virtue of a contract of employment or otherwise), that other person,

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

“sexual entertainment” means—

(a) any live performance, or

(b) any live display of nudity,

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

(4) For the purposes of the definition of “sexual entertainment”, “display of nudity” means—

(a) in the case of a woman, the showing of (to any extent and by any means) her nipples, pubic area, genitals or anus,

(b) in the case of a man, the showing of (to any extent and by any means) his pubic area, genitals or anus.

(5) Sexual entertainment is provided if (and only if) it is provided (or allowed to be provided) by or on behalf of the organiser.

(6) References in Schedule 2 (as modified for the purposes of section 45B) to the use of any premises by a person as a sexual entertainment venue are to be read as references to their use by the organiser.

(7) The following are not sexual entertainment venues—

(a) a sex shop (within the meaning of paragraph 2(1) of Schedule 2),

(b) such other premises as the Scottish Ministers may by order specify.

(8) An order under subsection (7)(b) may make different provision for different purposes.

- 5 (9) Premises at which sexual entertainment is provided as mentioned in subsection (2) on a particular occasion (“the current occasion”) are not to be treated as a sexual entertainment venue if sexual entertainment has not been provided on more than 3 previous occasions which fall wholly or partly within the period of 12 months ending with the start of the current occasion.
- (10) For the purposes of subsection (9)—
- 10 (a) each continuous period during which sexual entertainment is provided on the premises is to be treated as a separate occasion, and
- (b) where the period during which sexual entertainment is provided on the premises exceeds 24 hours, each period of 24 hours (and any part of a period of 24 hours) is to be treated as a separate occasion.
- (11) The Scottish Ministers may by order provide for—
- 15 (a) descriptions of performances, or
- (b) descriptions of displays of nudity,
- which are not to be treated as sexual entertainment for the purposes of this section.
- (12) An order under subsection (7)(b) or (11) is subject to the negative procedure.

45B Licensing of sexual entertainment venues

- 20 (1) A local authority may resolve that Schedule 2 (as modified for the purposes of this section) is to have effect in their area in relation to sexual entertainment venues.
- (2) If a local authority passes a resolution under subsection (1), Schedule 2 (as so modified) has effect in their area from the day specified in the resolution.
- 25 (3) The day mentioned in subsection (2) must not be before the expiry of the period of one year beginning with the day on which the resolution is passed.
- (4) A local authority must, not later than 28 days before the day mentioned in subsection (2), publish notice that they have passed a resolution under this section.
- (5) The notice must—
- 30 (a) state the general effect of Schedule 2 (as modified for the purposes of this section), and
- (b) be published electronically or in a newspaper circulating in the local authority’s area.
- (6) For the purposes of this section, paragraphs 1 and 3 to 25 of Schedule 2 apply with the following modifications—
- 35 (a) references to a sex shop are to be read as references to a sexual entertainment venue,
- (b) references to the use by a person of premises, vehicles, vessels or stalls as a sexual entertainment venue are to be read as references to their use by the organiser,
- 40 (c) in paragraph 1—

- (i) in sub-paragraph (b)—
 - (A) the word “or immediately following paragraph (i) is omitted,
 - (B) paragraph (ii) is omitted, and
- (ii) sub-paragraph (c) is omitted,

5

(d) in paragraph 7—

- (i) in sub-paragraph (2), at the beginning insert “Subject to sub-paragraph (3A),”, and
- (ii) after sub-paragraph (3) insert—

10

“(3A)If a local authority consider it appropriate to do so in relation to an application, the local authority may dispense with the requirement to publish an advertisement under sub-paragraph (2) and may instead publish notice of the application electronically.

(3B)Publication under sub-paragraph (3A) must be not later than 7 days after the date of the application.”,

15

(e) in paragraph 9—

- (i) in sub-paragraph (5)(c)—
 - (A) after the word “in” insert “the local authority’s area or”,
 - (B) after the word “for” insert “their area or”,
- (ii) after sub-paragraph (5) insert—

20

“(5A)For the purposes of sub-paragraph (5)(c), a local authority must—

- (a) from time to time determine the appropriate number of sexual entertainment venues for their area and for each relevant locality, and
- (b) publicise the determination in such manner as they consider appropriate.”,
- (iii) after sub-paragraph (6) insert—

25

“(6A)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 to which the application relates.”,

30

(f) in paragraph 12(2)(b), for “shorter” substitute “other”,

(g) in paragraph 19, after sub-paragraph (1) insert—

“(1A)But it is not an offence—

35

- (a) under sub-paragraph (1)(b) for the holder of a licence for a sexual entertainment venue to employ a person under the age of 18 in the business of the sexual entertainment venue if the employee’s duties do not involve the employee being in the sexual entertainment venue at a time when sexual entertainment is being provided, or

- (b) under sub-paragraph (1)(e) for the holder of a licence for a sexual entertainment venue, or the servant, employee or agent of such a person, to permit an employee under the age of 18 to enter the sexual entertainment venue at times when sexual entertainment is not being provided.”, and
- (h) in paragraph 25, in each of sub-paragraphs (1)(a) and (2), for “45” substitute “45B”.
- (7) In carrying out functions conferred by virtue of this section, a local authority must have regard to any guidance issued by the Scottish Ministers.”.
- (4) The title of Part 3 becomes “**Control of sex shops and sexual entertainment venues**”.

Miscellaneous and general

69 Deemed grant of applications

- (1) The 1982 Act is amended as follows.
- (2) In section 3 (discharge of functions of licensing authorities)—
- (a) in subsection (1), for the words from “shall” to the end substitute “must—
- (a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and
- (b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).”.
- (b) in subsection (4)—
- (i) the words “applied for” are repealed
- (ii) for “or, as the case may be, renewed” substitute “, renewed or, as the case may be, varied”.
- (iii) the words from “and” where first occurring to the end are repealed,
- (c) after subsection (4) insert—
- “(4A) A licence deemed to have been granted or renewed under subsection (4) is—
- (a) in the case of a temporary licence, to remain in force for the duration of the period sought in the application (up to a maximum period of 6 weeks), or
- (b) in any other case, to remain in force for the period of one year.
- (4B) A variation of the terms of a licence deemed to have been granted under subsection (4) is to have effect for the remaining period of the licence.
- (4C) Subsections (4) and (4B) do not affect—
- (a) the powers of revocation under section 7(6)(a),
- (b) paragraph 8(5) of Schedule 1 (which relates to renewals of existing licences),
- (c) the powers of variation under paragraph 10 of that Schedule, or
- (d) the powers of suspension under paragraphs 11 and 12 of that Schedule.”.

(d) for subsection (5) substitute—

“(5A) The deemed grant, renewal or variation of the terms of a licence under subsection (4) is, for the purposes of Schedule 1, to be treated as a decision of the licensing authority to grant, renew or vary the terms of a licence.

5 (5B) For the purposes of this section, a “relevant application” is an application under paragraph 1, 7 or 10 of Schedule 1.”

(3) After section 45B (as inserted by section 68 of this Act) insert—

“45C Deemed grant of applications

10 (1) For the purpose of the discharge of their functions under this Part, every local authority must—

(a) consider each relevant application made to them within the period of 3 months beginning with the date on which the application was made, and

15 (b) subject to the following provisions of this section, reach a final decision on the application within the period of 6 months beginning with the end of the 3 month period referred to in paragraph (a).

(2) On an application by the local authority within the 6 month period referred to in subsection (1)(b), the sheriff may, if it appears that there is a good reason to do so, extend that period as the sheriff thinks fit.

20 (3) The applicant is entitled to be a party to proceedings on an application under subsection (2).

(4) Where the local authority have failed to reach a final decision on the application before the expiry of—

(a) the 6 month period referred to in subsection (1)(b), or

25 (b) such further period as the sheriff may have specified on application under subsection (2),

the licence is deemed to have been granted, renewed or, as the case may be, varied on the date of such expiry.

(5) A licence deemed to have been granted or renewed under subsection (4) is to remain in force for the period of one year.

30 (6) A deemed variation of the terms of a licence deemed under subsection (4) is to have effect for the remaining period of the licence.

(7) Subsections (4) and (6) do not affect—

(a) the powers of revocation under paragraph 13 of Schedule 2, and

(b) the powers of variation under paragraph 15 of that Schedule.

35 (8) The deemed grant, renewal or variation of the terms of a licence under subsection (4) has the same effect, for the purposes of Schedule 2, as a decision of the licensing authority to grant, renew or vary the terms of a licence.

(9) For the purposes of this section, a “relevant application” is an application under paragraph 6 or 15 of Schedule 2.”

40 (4) In Schedule 1 (licensing: further provisions as to the general system), in paragraph 10, after sub-paragraph (5) insert—

“(6) Sub-paragraph (5) does not apply to a deemed variation of the terms of a licence under section 3(4).”.

- (5) In Schedule 2 (control of sex shops and sexual entertainment venues), in paragraph 15, after sub-paragraph (4) insert—

“(4A) Sub-paragraph (4) does not apply to a deemed variation of the terms of a licence under section 45C(4).”.

70 Procedure for hearings

- (1) The 1982 Act is amended as follows.

- (2) In Schedule 1 (licensing: further provisions as to the general system), after paragraph 18 insert—

“Power to make provision about hearings

18A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a licensing authority under this Schedule.

- (2) Regulations under this paragraph may, in particular, make provision—

- (a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,
- (b) about the rules of evidence which are to apply for the purposes of the hearing,
- (c) about the representation of any party at the hearing,
- (d) as to the times by which any step in the procedure must be taken, and
- (e) as to liability for expenses.

- (3) Regulations under this paragraph may make different provision for different purposes including, in particular, different types of licence.

- (4) Regulations under this paragraph are subject to the negative procedure.”.

- (3) In Schedule 2 (control of sex shops and sexual entertainment venues), after paragraph 24 insert—

“Power to make provision about hearings

24A(1) The Scottish Ministers may by regulations make provision as to the procedure to be followed at, or in connection with, any hearing to be held by a local authority under this Schedule.

- (2) Regulations under this paragraph may, in particular, make provision—

- (a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,
- (b) about the rules of evidence which are to apply for the purposes of the hearing,
- (c) about the representation of any party at the hearing,
- (d) as to the times by which any step in the procedure must be taken, and
- (e) as to liability for expenses.

- (3) Regulations under this paragraph may make different provision for different purposes, including, in particular, different types of licence.
- (4) Regulations under this paragraph are subject to the negative procedure.”.

71 Conditions for Part 3 licences

- (1) The 1982 Act is amended as follows.
- (2) After section 45C (as inserted by section 69) insert—

“Conditions of licences granted under this Part

45D Mandatory licence conditions

- (1) The Scottish Ministers may by order prescribe conditions to which licences granted by local authorities under this Part are to be subject.
- (2) Different conditions may be prescribed under subsection (1)—
 - (a) in respect of different licences or different types of licence,
 - (b) otherwise for different purposes, circumstances or cases.
- (3) An order under subsection (1) is subject to the affirmative procedure.
- (4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—
 - (a) to which licences granted by local authorities under this Part are to be subject, or
 - (b) to be imposed by local authorities in granting or renewing licences under this Part.
- (5) The following conditions are referred to in this Part as “mandatory conditions”—
 - (a) conditions prescribed under subsection (1),
 - (b) conditions prescribed under any power referred to in subsection (4), and
 - (c) conditions imposed, or required to be imposed, by any provision of this Part.
- (6) In this section and section 45E, references to licences granted by local authorities include references to—
 - (a) licences renewed by local authorities, and
 - (b) licences deemed by virtue of section 45C to have been granted or renewed by local authorities.

45E Standard licence conditions

- (1) A local authority may determine conditions to which licences granted by them under this Part are to be subject.
- (2) Conditions determined under subsection (1) are referred to in this Part as “standard conditions”.
- (3) Different conditions may be determined under subsection (1)—
 - (a) in respect of different licences or different types of licence,

- (b) otherwise for different purposes, circumstances or cases.
- (4) A local authority must publish, in such manner as they think appropriate, any standard conditions determined by them.
- (5) Standard conditions have no effect—
- 5 (a) unless they are published, and
- (b) so far as they are inconsistent with any mandatory conditions.
- (6) Subsection (1) is subject to paragraph 9(1A) of Schedule 2.”.
- (3) In paragraph 9 of Schedule 2 (disposal of applications for licences)—
- (a) in sub-paragraph (1)—
- 10 (i) the word “unconditionally” is repealed,
- (ii) paragraph (b) is repealed,
- (b) after sub-paragraph (1) insert—
- “(1A) In granting or renewing a licence under sub-paragraph (1)(a), a local authority may (either or both)—
- 15 (a) disapply or vary any standard conditions,
- (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,
- (c) in sub-paragraph (2)—
- (i) for “sub-paragraph” where first occurring substitute “sub-paragraphs (2ZA) and”,
- 20 (ii) for “(1)” substitute “(1A)(b)”,
- (d) after sub-paragraph (2) insert—
- “(2ZA) A variation made under sub-paragraph (1A)(a) or a condition imposed under sub-paragraph (1A)(b) has no effect in so far as it is inconsistent with any
- 25 mandatory condition to which the licence is subject.”,
- (e) in sub-paragraph (2A), for “(1)” substitute “(1A)(b)”.

72 Civic licensing standards officers

After Part 3 of the 1982 Act insert—

“PART 3A

CIVIC LICENSING STANDARDS OFFICERS

45F Civic licensing standards officers

- (1) Each local authority must appoint for their area one or more officers (a “civic licensing standards officer”)—
- 35 (a) to exercise, in relation to the authority’s area, the general functions conferred on civic licensing standards officers by virtue of section 45G, and
- (b) to exercise any other functions that may be conferred on such an officer by virtue of this or any other enactment.

- (2) A civic licensing standards officer appointed by a local authority is taken to be an authorised officer of the authority for the purposes of Parts 1 to 3.
- (3) A person may hold more than one appointment under subsection (1) (so as to be a civic licensing standards officer for more than one local authority area).
- 5 (4) Nothing in this section prevents an officer of a local authority other than a civic licensing standards officer from being an authorised officer of the authority for a purpose of Parts 1 to 3.
- (5) In this Part, a reference to a local authority includes a reference to that authority acting as the licensing authority for their area and a reference to an authorised officer of a local authority (however expressed) is to be construed accordingly.
- 10

45G General functions of a civic licensing standards officer

- (1) The general functions of a civic licensing standards officer are—
- 15 (a) to provide to any interested person information and guidance concerning the operation of Parts 1 to 3 in the officer’s area,
- (b) to supervise the compliance by the holder of a licence granted under Parts 1 to 3 in the officer’s area with—
- (i) the conditions of the licence, and
- (ii) the other requirements of Parts 1 to 3,
- 20 (c) to provide mediation services for the purposes of avoiding or resolving disputes or disagreements between—
- (i) the holder of a licence granted under Parts 1 to 3 in the officer’s area, and
- (ii) any other person,
- 25 concerning any matter relating to compliance with the conditions of the licence or the other requirements of Parts 1 to 3.
- (2) The function under subsection (1)(b) includes, in particular, power for a civic licensing standards officer, where the officer believes that a condition to which the licence is subject has been or is being breached—
- 30 (a) to give a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and
- (b) to refer the breach to the local authority which granted the licence for consideration at a meeting of the authority.
- (3) A civic licensing standards officer may only refer a breach of a condition under subsection (2)(b) if—
- 35 (a) the officer has given notice under subsection (2)(a) and the holder of the licence has failed to comply with it, or
- (b) the officer considers that it is appropriate for the breach to be referred to the authority without such a notice being given.
- 40 (4) In this section, a reference to an officer’s area is a reference to—

- (a) the local authority area for which the officer is appointed under section 45F(1), or
- (b) where the officer is appointed for more than one local authority area, the area for which the officer is exercising a function at the relevant time.”.

5 **73 Electronic communications under the 1982 Act**

- (1) The 1982 Act is amended as follows.
- (2) In Schedule 1 (licensing: further provisions as to the general system)—

- (a) after paragraph 3(3), insert—

10 “(3A) Where a licensing authority have determined to accept objections and representations by means of an electronic communication under paragraph 16A, an objection or representation is made for the purpose of sub-paragraph (1) of this paragraph if it is sent—

- (a) to the authority by means of an electronic communication which complies with the determination, and
 - 15 (b) within the time specified in sub-paragraph (1).

(3B) Sub-paragraph (3A) is without prejudice to sub-paragraph (3).”,

- (b) after paragraph 16 insert—

“*Electronic communications*

16A(1) A licensing authority may determine to accept—

- 20 (a) applications for the grant or renewal of a licence under paragraph 1,
 - (b) objections or representations under paragraph 3,
 - (c) notifications of a change to a licence under paragraph 9,
- by means of an electronic communication.

(2) Where a licensing authority make a determination under sub-paragraph (1) they must—

- 25 (a) specify in the determination—
 - 30 (i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,
 - (ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and
 - (iii) any means of authentication (in addition to an electronic signature) that are acceptable, and
 - (b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

- 35 (a) to be in writing is satisfied if the communication is—
 - (i) in the form specified under sub-paragraph (2)(a)(i), and
 - (ii) sent to the address specified under sub-paragraph (2)(a)(ii),

(b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A licensing authority may determine to—

(a) give notices under paragraphs 5, 9, 10, 11 or 12, and

(b) give reasons under paragraph 17,

by means of an electronic communication.

(5) A licensing authority may only give a notice or reasons by means of an electronic communication if—

(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area in which the electronic communication is to be sent.

(9) A licensing authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

(3) In Schedule 2 (control of sex shops and sexual entertainment venues)—

(a) after paragraph 8(4) insert—

“(4A) Where a local authority have determined to accept objections and representations by means of an electronic communication under paragraph 22A, an objection or representation is made for the purpose of sub-paragraph (2) of this paragraph if it is sent—

- (a) to the authority by means of an electronic communication which complies with the determination, and
- (b) within the time specified in sub-paragraph (2).

(4B) Sub-paragraph (4A) is without prejudice to sub-paragraph (4).”,

(b) after paragraph 22 insert—

“Electronic communications

22A(1) A local authority may determine to accept—

- (a) applications for the grant or renewal of a licence under this Schedule,
- (b) objections or representations under paragraph 8,
- (c) notifications of a change to a licence under paragraph 14,

by means of an electronic communication.

(2) Where a local authority make a determination under sub-paragraph (1) they must—

- (a) specify in the determination—
 - (i) the form of electronic communication by which applications, objections, representations or notifications may be made or given,
 - (ii) the electronic address to be used for making or giving applications, objections, representations or notifications, and
 - (iii) any means of authentication (in addition to an electronic signature) that are acceptable, and

(b) publicise the determination as they consider appropriate.

(3) In relation to an application, objection, representation or notification made or given by means of an electronic communication, any requirement of this Schedule for the application, objection, representation or notification—

- (a) to be in writing is satisfied if the communication is—
 - (i) in the form specified under sub-paragraph (2)(a)(i), and
 - (ii) sent to the address specified under sub-paragraph (2)(a)(ii),
- (b) to be signed is satisfied if the communication includes an electronic signature or is authenticated by a means specified under sub-paragraph (2)(a)(iii).

(4) A local authority may determine to—

- (a) give notices under paragraphs 8, 10, 13, 14 or 15, and
- (b) give reasons under paragraph 23,

by means of an electronic communication.

(5) A local authority may only give a notice or reasons by means of an electronic communication if—

(a) the person to whom the notice or reasons is or are to be given has agreed to receive notices and reasons by means of an electronic communication, and

(b) the communication is sent to an electronic address, and is in an electronic form, specified for that purpose by the person.

(6) In relation to any notice or reasons given by means of an electronic communication, any requirement of this Schedule for the notice or reasons to be given in writing is satisfied if the communication is sent in accordance with sub-paragraph (5).

(7) When a licensing authority gives a notice or reasons by means of an electronic communication then, unless the contrary is proved, it is to be treated as having been received by the person to whom it was sent on the second working day after the day on which it was sent.

(8) For the purposes of sub-paragraph (7), “working day” means a day which is not—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning, or

(e) a day which is a local or public holiday in the area to which the electronic communication is sent.

(9) A local authority may make different determinations for different purposes including, in particular, for different types of licence.

(10) In this Schedule—

“electronic communication” is to be construed in accordance with section 15(1) of the Electronic Communications Act 2000,

“electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000.”.

PART 4

GENERAL

74 Interpretation

(1) In this Act—

“the 1982 Act” means the Civic Government (Scotland) Act 1982,

“the 2005 Act” means the Licensing (Scotland) Act 2005.

(2) See section 40 for the interpretation of words and expressions used in Part 1.

75 Regulations

(1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—

- (a) different provision for different purposes,
- (b) incidental, supplementary, consequential, transitional, transitory or saving provision.

- (2) Regulations under section 2(4), 8(3) or 20(3) are subject to the affirmative procedure.
- 5 (3) Regulations under section 76(1) containing provisions which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (4) All other regulations under this Act are subject to the negative procedure.

76 Ancillary provision

- 10 (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.
- (2) Regulations under this section may modify this or any other enactment.

77 Minor and consequential amendments and repeals

15 Schedule 2 contains—

- (a) minor amendments, and
- (b) amendments and repeals consequential on the provisions of this Act.

78 Commencement

- (1) This Part, other than section 77, comes into force on the day after Royal Assent.
- 20 (2) The other provisions of this Act (including section 77) come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under this section may include transitional, transitory or saving provision.

79 Short title

The short title of this Act is the Air Weapons and Licensing (Scotland) Act 2015.

SCHEDULE 1
(introduced by section 2(3))

EXEMPTIONS

Approved air weapon clubs

- 5 1 It is not an offence under section 2(1) for an individual (“A”) to use or possess an air
weapon without holding an air weapon certificate if—
- (a) A is a member of an approved air weapon club,
 - (b) the use or possession occurs while A is engaged as such a member—
 - 10 (i) in target shooting at the club, another approved air weapon club, an event
or competition, or
 - (ii) in connection with such target shooting, and
 - (c) where A is under the age of 14, A’s use and possession of an air weapon is
supervised by another club member aged 21 years or more.

Registered firearms dealers and their employees

- 15 2 (1) It is not an offence under section 2(1) for an individual to use, possess, purchase or
acquire an air weapon without holding an air weapon certificate if—
- (a) the individual is carrying on business as a registered firearms dealer or is the
employee of a registered firearms dealer, and
 - (b) the possession occurs in the ordinary course of the business as such a dealer.
- 20 (2) For the purposes of sub-paragraph (1), it is irrelevant whether the use, possession,
purchase or acquisition of the air weapon occurs at a place—
- (a) which is not a place of business of the registered firearms dealer, or
 - (b) which the dealer has not registered as a place of business under section 33 or 37 of
the 1968 Act.
- 25 (3) It is not an offence under section 2(1) for an individual (“A”) to—
- (a) borrow an air weapon from a registered firearms dealer, and
 - (b) use and possess the weapon on land occupied by the dealer,
without holding an air weapon certificate, if the conditions in sub-paragraph (4) are
complied with.
- 30 (4) The conditions are—
- (a) A uses and possesses the air weapon under the supervision of the registered
firearm dealer or an employee of the dealer (“the supervisor”), and
 - (b) where A is under the age of 14, the supervisor is aged 21 years or more.

Auctioneers

- 35 3 (1) It is not an offence under section 2(1) for an individual to possess, acquire or purchase
an air weapon without holding an air weapon certificate if—

- (a) the individual is carrying on business as an auctioneer or is the employee of an auctioneer, and
 - (b) the possession occurs in the ordinary course of the business as an auctioneer.
- (2) It is not an offence under section 24 for an individual (“A”) who is an auctioneer (but not a registered firearms dealer) in the course of A’s business as such an auctioneer to sell (or expose for sale) by auction an air weapon if A holds a police permit granted by the chief constable under section 12.

Carriers and warehouse keepers

- It is not an offence under section 2(1) for an individual to possess an air weapon without holding an air weapon certificate if—
- (a) the individual is carrying on business as a carrier or warehouse keeper or is the employee of a carrier or warehouse keeper, and
 - (b) the possession occurs in the ordinary course of the business as a carrier or warehouse keeper.

Artistic performers

- (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate while the individual is taking part in an activity listed in sub-paragraph (2).
- (2) The activities are—
- (a) a theatrical performance or a rehearsal of such a performance,
 - (b) the production of a film for cinema, television or other genuine and prearranged artistic purpose.

Cadet corps

- (1) It is not an offence under section 2(1) for an individual to use or possess an air weapon without holding an air weapon certificate if—
- (a) the individual is a member of an approved cadet corps or the instructor of such a member, and
 - (b) the use or possession occurs while the individual is engaged in drill or target shooting exercises as such a member or instructor.
- (2) In this paragraph “approved cadet corps” means a cadet corps which has been approved by the Secretary of State under section 54(5)(b) of the 1968 Act.

Bodies corporate etc.

- (1) It is not an offence under section 2(1) for a person who is not an individual (“the entity”) to possess, purchase or acquire an air weapon without holding an air weapon certificate if an officer of the entity holds an air weapon certificate in the officer’s capacity as such an officer.
- (2) For the purposes of sub-paragraph (1), a reference to an officer of the entity is a reference to—

- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member,
- (c) in relation to a Scottish partnership, a partner,
- (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

Holders of police permits

- 8 (1) It is not an offence under section 2(1) for an individual who holds a police permit under section 12 to possess or acquire an air weapon without holding an air weapon certificate if the permit authorises the possession or acquisition.
- (2) It is not an offence under section 24 for an individual who holds a police permit under section 12 to sell (or expose for sale) an air weapon, in the course of the holder's business, if the permit authorises the sale.

Holders of visitor permits

- 9 It is not an offence under section 2(1) for an individual who holds a visitor permit under section 13 to use, possess, purchase or acquire an air weapon without holding an air weapon certificate if the permit authorises the use, possession, purchase or, as the case may be, acquisition.

Authorised events

- 10 (1) It is not an offence under section 2(1) for an individual to borrow, hire, use or possess an air weapon without holding an air weapon certificate while the individual is—
- (a) at an event in respect of which an event permit has been granted by the chief constable under section 17, and
 - (b) engaging in an event activity.
- (2) In this paragraph, “event activity” has the meaning given in section 17(7).

Supervised use of air weapons on private land

- 11 (1) It is not an offence under section 2(1) for an individual (“A”) to—
- (a) borrow an air weapon from the occupier of private land, and
 - (b) use and possess the weapon on that land,
- without holding an air weapon certificate, if the conditions in sub-paragraph (2) are complied with.
- (2) The conditions are—
- (a) A uses and possesses the air weapon under the supervision of the occupier of the land or an employee or agent of the occupier (“the supervisor”),
 - (b) the supervisor holds an air weapon certificate,

- (c) A complies with any conditions attached to the supervisor’s certificate so far as relevant to the use and possession of the air weapon by A, and
- (d) where A is under the age of 14, the supervisor is aged 21 years or more.

Use of air weapons at recreational shooting facilities

- 5 12 (1) It is not an offence under section 2(1) for an individual (“A”) to borrow, hire, use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—
- (a) A reasonably believes that an individual who is responsible for the management and operation of the facility holds an air weapon certificate, and
 - 10 (b) A’s use or possession occurs only while A is at the facility.
- (2) It is not an offence under section 2(1) for an individual (“B”) to use or possess an air weapon without holding an air weapon certificate at a recreational shooting facility, if—
- (a) B reasonably believes that an individual who is responsible for the management and operation of the recreational shooting facility holds an air weapon certificate, and
 - 15 (b) B is an employee of the operator of the facility and is acting in the ordinary course of the employer’s business as such an operator.
- (3) In this paragraph, “recreational shooting facility” means—
- (a) a miniature rifle range or a shooting gallery at which air weapons are used, or
 - 20 (b) a facility for combat games which involve an air weapon, which is operated with a view to making a profit.

Museums

- 25 13 (1) It is not an offence under section 2(1) for an individual who is responsible for the management of a museum or is an employee of the museum to possess, purchase or acquire an air weapon without holding an air weapon certificate if—
- (a) the possession, purchase or acquisition is for the purposes of the museum, and
 - (b) either—
 - (i) there is a museums firearms licence in force in respect of the museum, or
 - 30 (ii) an individual mentioned in sub-paragraph (2) holds an air weapon certificate.
- (2) The individuals are—
- (a) an individual responsible for the management of the museum, or
 - (b) a curator at the museum.
- (3) In this paragraph—
- 35 (a) a reference to an individual responsible for the management of the museum is a reference to a member of the board of trustees or the governing body or an individual exercising corresponding functions,
 - (b) “museum firearms licence” means a licence granted under the Schedule to the Firearms (Amendment) Act 1988.

Air weapons on ships

- 14 It is not an offence under section 2(1) for a person to use and possess an air weapon without holding an air weapon certificate while on board a ship if the weapon is part of the equipment of the ship.

5 *Purchase of air weapons for delivery outwith Great Britain*

- 15 It is not an offence under section 2(1) for an individual to purchase an air weapon from a registered firearms dealer without holding an air weapon certificate if—

- (a) the purchaser is aged 18 years or more, and
(b) the weapon is to be delivered to a place outwith Great Britain without first coming into the purchaser's possession.

10

Loaning of air weapons for exempted purposes

- 16 (1) It is not an offence under section 24(1) or (2) for a person listed in sub-paragraph (2) to loan an air weapon to an individual ("A"), who does not hold an air weapon certificate, for the purpose of A's using and possessing the weapon in accordance with an exemption under this schedule.

15

- (2) The persons are—

- (a) a holder of an air weapon certificate, or
(b) a person who—
 (i) does not hold an air weapon certificate, but
 (ii) is entitled to use or possess an air weapon without committing an offence by virtue of an exemption under this schedule.

20

Public servants carrying out official duties

- 17 (1) It is not an offence under this Part for a person listed in sub-paragraph (3) to carry out an activity listed in sub-paragraph (2) without holding an air weapon certificate, if the carrying out of the activity is for or in connection with the person's duties.

25

- (2) The activities are the use, possession, purchase, acquisition, manufacture, testing, repair, sale, transfer or disposal of an air weapon.

- (3) The persons are—

- (a) a constable,
(b) a member of police staff,
(c) a police cadet appointed under section 25 of the Police and Fire Reform (Scotland) Act 2012,
(d) a person providing forensic services in pursuance of section 31 of the Police and Fire Reform (Scotland) Act 2012,
(e) a member of the Ministry of Defence police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987,
(f) a member of the British Transport Police,
(g) a member of the Civil Nuclear Constabulary,

35

- (h) a civilian officer of the British Transport Police or the Civil Nuclear Constabulary,
- (i) a member of any other police force while executing a warrant or otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
- 5 (j) a person in the armed forces of Her Majesty,
- (k) a member of the armed forces of another country when that member is serving with the armed forces of Her Majesty,
- (l) the Queen’s Lord Treasurer and Remembrancer.

(4) In this paragraph “armed forces” means naval, military or air services.

10 *Holders of certificates or permits with conditions*

18 (1) It is not an offence under section 6(4) for a holder of an air weapon certificate to fail to comply with a condition attached to the holder’s certificate if the conditions in sub-paragraph (2) are complied with.

(2) The conditions are—

- 15 (a) that the holder of the certificate would be entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule if the holder did not hold the certificate, and
- (b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

20 (3) It is not an offence under section 15(4) for a holder of a police permit or a visitor permit to fail to comply with a condition attached to the holder’s permit if the conditions in sub-paragraph (4) are complied with.

(4) The conditions are—

- 25 (a) that the holder of the permit is entitled to use, possess, purchase or, as the case may be, acquire an air weapon by virtue of an exemption under this schedule, and
- (b) that the failure relates to the use, possession, purchase or, as the case may be, acquisition of an air weapon in accordance with the exemption.

SCHEDULE 2
(introduced by section 77)

30 MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1

AMENDMENTS AND REPEALS RELATING TO PART 1

Firearms Act 1968

1 (1) The Firearms Act 1968 is amended as follows.

35 (2) In section 3(1) (offences relating to manufacturing, selling or transferring firearms when not a firearms dealer)—

- (a) immediately following paragraph (a), insert “or”,

(b) the word “or” immediately following paragraph (b) is repealed,

(c) paragraph (c) is repealed.

(3) In section 21A (firing an air weapon beyond premises), after subsection (1) insert—

“(1A) A person commits an offence if the person—

(a) is supervising the use and possession of an air weapon on private premises by a person under the age of 18, and

(b) allows the supervised person to fire any missile beyond those premises.”.

(4) Section 22(4) (offence for person under 18 to possess an air weapon or ammunition for an air weapon) is repealed.

(5) Section 23 (exceptions from section 22(4) of that Act) is repealed.

(6) In section 24(4) (supplying firearms to minors), in paragraph (b), for the words from “by” to the end substitute “the person holds an air weapon certificate granted under section 5 of the Air Weapons and Licensing (Scotland) Act 2015 or the possession is otherwise in accordance with Part 1 of that Act.”.

(7) In section 24ZA (failing to prevent minors from having air weapons), for subsection (2) substitute—

“(2) Subsection (1) does not apply where—

(a) the person under the age of 18 holds an air weapon certificate granted under section 5 of the Air Weapons and Licensing (Scotland) Act 2015, or

(b) the use or possession of the weapon by the person under the age of 18 is otherwise in accordance with Part 1 of that Act.”.

(8) In section 57 (interpretation)—

(a) in subsection (3), for “22(4), 22(5), 23(1)” substitute “21A(1A)”,

(b) in subsection (4), in the definition of “firearms dealer”, in paragraph (b), for “sells or transfers” substitute “manufactures, sells, transfers, repairs or tests”.

(9) In Schedule 6 (prosecution and punishment of offences)—

(a) in the table in Part 1 (punishments)—

(i) in the entry for section 21A (person making improper use of air weapon), in the first column, for “21A” substitute “21A(1) and (1A)”,

(ii) the entry for section 22(4) is repealed,

(iii) the entry for section 23(1) is repealed,

(b) in Part 2 (supplementary provisions as to trial and punishment of offences)—

(i) in paragraph 7, for “21A, 22(3) or (4), 23(1)” substitute “21A(1), 21A(1A), 22(3)”,

(ii) in paragraph 8, for “21A, 22(3) or (4), 23(1),” substitute “21A(1), 21A(1A), 22(3),”.

Violent Crime Reduction Act 2006

- 2 Section 32 of the Violent Crime Reduction Act 2006 (sales of air weapons by way of trade or business to be face to face) is repealed.

PART 2

AMENDMENTS RELATING TO PART 2

Licensing (Scotland) Act 2005

- 3 (1) The 2005 Act is amended as follows.
- (2) In section 37 (review of premises licence on Licensing Board’s initiative)—
- (a) in subsection (3), for “subsection” where second occurring substitute “section”,
- 10 (b) in subsection (4)—
- (i) in paragraph (a), for “subsection” substitute “section”,
- (ii) in paragraph (b), for “subsection” substitute “section”.

PART 3

AMENDMENTS RELATING TO PART 3

Civic Government (Scotland) Act 1982

- 4 (1) The 1982 Act is amended as follows.
- (2) In Schedule 1 (licensing: further provisions as to the general system)—
- (a) in paragraph 5—
- (i) the sub-paragraph (2A) which was inserted by section 172(6)(d) of the Criminal Justice and Licensing (Scotland) Act 2010 is renumbered as sub-paragraph (2ZA),
- 20 (ii) in the sub-paragraph (2A) which was inserted by paragraph 11(6)(b)(ii) of Schedule 1 to the Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006, SSI 2006/475, for “(1)(b)” substitute “(1A)(b)”,
- 25 (b) in paragraph 7(3), for “(2), (2A)” substitute “(1A), (2), (2ZA), (2A)”.

Air Weapons and Licensing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the licensing and regulation of air weapons; to amend the Licensing (Scotland) Act 2005; to amend and extend the licensing provisions of the Civic Government (Scotland) Act 1982; and for connected purposes.

Introduced by: Kenny MacAskill
On: 14 May 2014
Bill type: Government Bill

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AIR WEAPONS AND LICENSING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Air Weapons and Licensing (Scotland) Bill introduced in the Scottish Parliament on 14 May 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 49–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

PURPOSE

3. The Bill introduces a system of licensing for air weapons in Scotland. The Bill creates a number of new offences related to possession, use and acquisition of air weapons by persons who do not hold a licence or do not act in accordance with the licensing regime. The Bill also sets out the framework through which the Police Service of Scotland may grant an air weapon licence to appropriate individuals.

4. The Bill will give local communities the power to regulate sexual entertainment venues in their areas. The Bill also amends the licensing regimes in relation to alcohol licensing, taxis and private hire cars, metal dealers, as well as making systematic changes across the civic licensing regimes contained within the Civic Government (Scotland) Act 1982 (“the 1982 Act”).

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

STRUCTURE AND SUMMARY OF THE BILL

6. The Bill is in four parts:

- **Part 1 Air weapons** sets out a new licensing system for air weapons administered by the Police Service of Scotland. Specific provisions include:
 - a definition of the air weapons that will be subject to licensing;
 - a requirement for air weapon certificates and the process for applications, grants (including conditions and duration) variations, renewal and revocation of these;
 - a system of police permits, visitor permits and event permits;
 - restrictions on the commercial sale, sale for delivery outwith Scotland, manufacture, repair, testing of air weapons and the operation of recreational shooting facilities;
 - Enforcement powers and offences;
 - Power to set fees and provide guidance;
 - Air gun clubs;

- Exemptions from the licensing regime.
- **Part 2 Alcohol licensing** amends the existing licensing regime for alcohol licensing included within the Licensing (Scotland) Act 2005 (“the 2005 Act.”) Specific provisions include:
 - Amendment of the licensing objective in relation to children to also include young persons;
 - Amendment of the duration of a licensing policy statement to align with the term of Local Government elections;
 - 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 to be held 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 Offenders Act 1974;
 - Creation of new offences of giving, or making available, alcohol to a child or young person for consumption in a public place;
 - 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;
 - For an overprovision assessment allow Boards to take account of licensed hours, among other things;
 - A duty on Boards to prepare an annual financial report in respect of their licensing activities;
 - Removal of the requirement for a premises licence holder to notify a change in interested parties and amendment of the definition of an “interested party” to remove premises managers;
 - Changes to the personal licence holder requirements including removal of the five year restriction on re-applying for a licence revoked on grounds of failing to undertake refresher training or notifying the board of such, and other changes to the personal licence holder requirements;
 - A requirement for a Licensing Board to issue an acknowledgement of complete applications, unless the Board does not consider that it would be appropriate to do so;
 - Automatic grant of a licence where a Licensing Board has failed to determine an application within the required period or the extended period as granted by a sheriff. This clarifies compliance with the EU Services Directive.

- **Part 3 Civic Licensing** amends the existing licensing regimes included within the 1982 Act:

Sexual entertainment venues

Sets out a new licensing system for sexual entertainment venues administered by local authorities. Specific provisions include:

- The definition of sexual entertainment venues;
- The power for local authorities to license sexual entertainment venues according to the existing structure set out in Schedule 2 of the 1982 Act;
- The power for local authorities to determine the number of sexual entertainment venues in their area.

Metal dealers

Amendments to the metal dealer regime. Specific provisions include:

- Removal of the exemption warrants system that allowed a metal dealer with a larger turnover to be exempted;
- Limit payment for metal by metal dealers or itinerant metal dealers to prescribed methods i.e. bank transfer or cheque;
- Amended standards for identification of customers;
- Amended standards of record keeping;
- Removal of mandatory requirement that metal dealers should not process metal for 48 hours after receiving it.

Taxis and private hire cars

Amendments to the taxis and private hire cars regime. Specific provisions include:

- The power to refuse to grant private hire car licences on grounds of overprovision;
- The extension of taxi driver testing to include private hire car drivers;
- Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

Public entertainment venues

Abolish 'theatre licences' as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licencing regime provided for in the 1982 Act.

Miscellaneous and general

Amendments to the operation of all civic government licensing regimes. Specific provisions include:

- Power for Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;

- Introduction of a new role, Civic Licensing Standards Officer;
 - Where it has not already been provided for, the deemed grant of a licence where the Local Authority has failed to determine an application within the required period or the extended period granted by a sheriff.
- **Part 4 General Provision** sets out general provisions, such as for the making of ancillary provision by regulations. It also contains definitions, the short title and provisions for commencement of the Act by order.

PART 1 – AIR WEAPONS

7. The provisions in this Part establish a licensing regime in relation to air weapons.

Meaning of air weapon

Section 1 – Meaning of “air weapon”

8. Section 1 defines the term “air weapon” for the purposes of the Part. Subsection (2) adopts the definition from section 1(3)(b) of the Firearms Act 1968 (“the 1968 Act”). Section 1(3)(b) of the 1968 Act provides that an air weapon is an air rifle, air gun or air pistol which does not fall within section 5(1) of the 1968 Act and which is not of a type declared by the Secretary of State by rules to be “specially dangerous”. The Firearms (Dangerous Air Weapons) (Scotland) Rules 1969 (S.I. 1969/270) as amended are the applicable rules made by the Secretary of State.

9. The effect of this is that the Part applies to air weapons capable of a muzzle energy equal to or lower than 12 foot pounds (ft/lb), or 6 ft/lb for an air pistol (approximately 16.27 joules and 8.13 joules respectively). Air weapons above these thresholds – or those that come within section 5(1) of the 1968 Act, for example by being disguised as another object, or designed or adapted to use a self-contained gas cartridge system – will continue to require to be held on a Firearms Certificate issued under the 1968 Act. Note that section 48 of the Firearms (Amendment) Act 1997 provides that any reference to an air rifle, air pistol or air gun in the Firearms Acts 1968 to 1997 includes a reference to any such rifle, pistol or gun which is powered by compressed carbon dioxide and therefore such weapons also fall to be licensed by the Part.

10. Subsection (4)(a)(i) adds a lower power threshold of one joule (approximately 0.74 ft/lb) to this definition, so that air weapons with a muzzle energy of one joule or below do not require to be held on an air weapon certificate. Subsection (4)(a)(ii) also excludes air weapons designed for use only underwater, for example spear guns, from requiring a certificate. Such weapons are excluded from existing UK firearms legislation by regulation 2 of the Firearms (Dangerous Air Weapons) (Scotland) Amendment rules 1993 (S.I. 1993/1541).

11. Subsection (3) sets out that component parts and sound moderators for air weapons are included in the definition of “air weapon”, and require to be held on an air weapon certificate.

Air weapon certificates

Section 2 – Requirement for air weapon certificate

12. This section makes it an offence for a person to use, possess, purchase or acquire an air weapon (as defined in section 1) without holding a valid air weapon certificate or otherwise than in accordance with the Part. Subsection (2) specifies that this offence is triable summarily or on indictment, and sets out the maximum penalties for both. The offence attracts strict liability. A “person” includes non-natural (e.g. corporate bodies) as well as natural persons.

13. Subsection (3) introduces schedule 1, which sets out a number of exemptions from the requirement to hold an air weapon certificate, and certain other offences created by the Part. Commentary on schedule 1 begins at paragraph 222 of this paper. Subsection (4) provides the Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations. Such regulations are subject to the affirmative procedure in the Scottish Parliament.

Section 3 – Application for grant or renewal of air weapon certificate

14. This section sets out the process by which an individual can apply for an air weapon certificate, or the renewal of a certificate which has previously been granted. Subsection (1) states that applications must be made to the Chief Constable of the Police Service of Scotland, and sets a lower age limit of 14 for applicants.

15. Subsection (2) provides that applications for an air weapon certificate must be made in the form specified in regulations issued under section 37 and must be verified as set out in section 4. Additionally, applicants below the age of 18 must provide information specified in section 7. If an application is not accompanied by the required information it cannot be considered by the Chief Constable. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

16. Subsection (3) requires the Chief Constable to keep a register of all applications for a new or renewed air weapon certificate, even if the application is ultimately unsuccessful.

Section 4 – Verification of applications

17. This section, combined with section 3(2)(a), requires an application for a new or renewed air weapon certificate to be verified by an appropriate individual before it can be considered by the Chief Constable. Subsection (2) sets out who can verify an application but subsection (2)(c) lists those who can never verify an application, and subsection (3) requires the verifier to confirm the accuracy of any information supplied with the application. In every case the verifier must have known the applicant personally for at least two years, but not be related to them (see the definition of “relative” in section 40) or be ordinarily resident outside the United Kingdom, or be a Registered Firearms Dealer or be a constable or member of police staff of the Police Service of Scotland or a member or employee of the Scottish Police Authority. The Chief Constable must also be satisfied that verifiers are of good standing in the community. Further detail on who can verify an application will be provided in guidance published by the Scottish Ministers under section 39.

Section 5 – Grant or renewal of air weapon certificate

18. This section allows the Chief Constable to issue a new or renewed air weapon certificate provided that the applicant is fit to be entrusted with an air weapon; is not prohibited from possessing any firearms by section 21 of the 1968 Act (which makes provision to prohibit for life or 5 years possession of firearms, including air weapons, by persons who have been convicted and sentenced to specified terms of imprisonment); has a good reason to use, possess, purchase or acquire an air weapon (for example, pest control, sporting target shooting, or being a collector); and in all the circumstances can do so without danger to the public safety or the peace (this last test is intended to allow account to be taken of factors not only directly about the applicant but beyond, such as the applicant’s wider domestic situation or acquaintances). Further clarity on how the Chief Constable should test applicants against these criteria will be provided in guidance published by the Scottish Ministers under section 39.

19. Subsection (2) allows the Chief Constable to consider applicants who already hold a firearm or shotgun certificate issued under the 1968 Act to have met the “fit” and “not prohibited” criteria without further enquiry, on the grounds that these tests will already have been met for the grant of the firearm or shotgun certificate.

20. Subsection (3) allows the police to visit an applicant’s home, or any other place where air weapons are intended to be stored or used, and conduct enquiries relating to the criteria in subsection (1) before granting or renewing an air weapon certificate.

Section 6 – Air weapon certificate: conditions

21. This section relates to conditions which are applied to air weapon certificates. Conditions are defined in section 40(1) as including requirements and restrictions and may comprise positive or negative obligations. Conditions may therefore place restrictions on the way that the certificate holder stores or uses their weapons, or may require the holder to carry out certain administrative functions (for example, informing the Chief Constable if they change address).

22. Subsection (1) sets out that all air weapon certificates will carry certain mandatory conditions, which will be specified in regulations issued under section 37. Subsection (2) allows the Chief Constable to attach additional conditions to certificates as required, and to change a certificate’s conditions at the time of renewal.

23. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by subsection (1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).

24. Subsections (4) and (5) create the offence of non-compliance with any conditions attached to an air weapon certificate, and set out the maximum penalty available respectively. This offence attracts strict liability.

Section 7 – Special requirements and conditions for young persons

25. This section sets out additional requirements for applications and certificates granted where the applicant is aged under 18. When combined with the minimum age for applicants at section 3(1), this section applies to applicants aged 14-17.

26. When read with section 3(2)(b), subsection (2) of this section requires that applications for an air weapon certificate from an individual aged 14-17 must contain a statement of consent from the applicant's parent or guardian in the form and manner prescribed by regulations under section 37. The term "guardian" is defined at section 40(1).

27. Subsections (3) to (5) set out mandatory conditions for air weapon certificates granted to 14-17 year olds. The condition in subsection (4) prohibits a 14-17 year old with an air weapon certificate from purchasing or owning an air weapon, meaning that they may only use borrowed or hired air weapons. This condition applies to all air weapon certificates granted to young persons. Subsection (5) lists the specific activities for which a 14-17 year old might be granted an air weapon certificate. The Chief Constable must apply one or more of the conditions listed at subsection (5) to the young person's air weapon certificate, as appropriate.

28. Subsection (6) disapplies the requirement that a young applicant need satisfy the Chief Constable that the applicant has a good reason for purchasing or acquiring an air weapon because an air weapon certificate granted to a young person will not permit them to purchase or own such a weapon and therefore that aspect of the test for grant or renewal is not relevant.

29. Subsection (7) defines agriculture for the purposes of this section, specifically subsection (5)(d). The definition used at section 85 of the Agricultural Holdings (Scotland) Act 1991 is adopted, which refers to "horticulture, fruit growing; seed growing; dairy farming; livestock breeding and keeping; the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds; and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes: and "agricultural" shall be construed accordingly".

Section 8 – Duration of air weapon certificate

30. Subsection (1) sets the normal duration of air weapon certificates at five years, except in the case of a certificate issued to a 14-17 year old, where the certificate expires on the holder's 18th birthday. At this point the young person's air weapon certificate can be renewed and the conditions required by section 7 may be removed (for example, the prohibition on purchasing a weapon).

31. Subsection (2) provides that an air weapon certificate will remain valid beyond its stated expiry date, provided that the holder has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The renewal application must be valid, i.e. comply with the requirements in section 3 and section 36, for this subsection to apply. The effect of this section is that the holder neither has to surrender the holder's weapons nor commits the offence at section 2(1) when the original certificate expires, provided that renewal is being actively considered by the Chief Constable.

32. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon certificates other than those in relation to young people. The regulations will be subject to the affirmative procedure in the Scottish Parliament.

Section 9 – Alignment of different types of certificate

33. This section allows air weapon certificates to be made co-terminous with firearm or shotgun certificates issued under the 1968 Act. This allows for all certificates to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 36 are expected to make provision for a proportionately lowered fee where such air weapon certificates are granted or renewed for significantly shorter duration. This section does not affect the duration of firearm or shotgun certificates.

34. Subsections (1) and (2) allow an applicant who already holds a valid firearm and/ or shotgun certificate to request that the expiry date on an air weapon certificate – if granted or renewed – match the expiry date on their existing firearm and/ or shotgun certificate(s). Because the standard duration for firearm, shotgun and air weapon certificates are all set at five years, an air weapon certificate issued in this way will necessarily have a shorter than normal duration when it is first granted.

35. Subsections (3) and (4) allow an applicant who already holds a live air weapon certificate to request that that certificate be renewed before it has run its full five year lifespan, and re-issued on the same date that a new or renewed firearm and/ or shotgun certificate is granted, so that the expiry dates on all certificates are aligned. This will necessarily mean that the air weapon certificate which they originally paid for on a five year basis will not have lasted for its full duration.

Section 10 – Variation of air weapon certificate

36. This section allows the Chief Constable to vary any of the details on an air weapon certificate after it has been granted or renewed, including adding, amending or removing conditions on the certificate (except the mandatory conditions required by section 6, and, if applicable, section 7). The Chief Constable may vary a certificate at any time, but is obliged to notify the certificate holder of the changes made.

37. Subsection (2)(a) separately allows the holder of an air weapon certificate to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable's discretion.

38. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 6(1)), or any other condition attached as a requirement of this Part (for example, the conditions for 14-17 year olds required by section 7(3)).

39. Subsection (4) allows the Chief Constable to require an air weapon certificate holder to relinquish their certificate within 21 days, for the purpose of varying the physical certificate in any way. Failure to do so may result in revocation of the certificate under section 11(2)(c).

Section 11 – Revocation of air weapon certificate

40. This section deals with revocation of an air weapon certificate. Subsection (1) requires the Chief Constable to revoke an air weapon certificate if satisfied that there is a danger to public safety or the peace if the certificate holder continues to possess an air weapon, or that the certificate holder is prohibited from possessing firearms under section 21 of the 1968 Act. These tests reflect those at sections 5(1)(d) and 5(1)(b) respectively.

41. Subsection (2) separately provides – but in contrast with subsection (1) does not require – the Chief Constable with discretion to revoke an air weapon certificate where the Chief Constable has reason to believe that the certificate holder is no longer a fit person to possess an air weapon (for example, if the holder was convicted of a crime of violence, or there is evidence of drug or alcohol abuse that meant that they could no longer be trusted with a firearm), or that they no longer have a good reason to hold a certificate (for example, if the holder had been a member of an airgun club but had not renewed membership of it). These tests reflect those at sections 5(1)(a) and 5(1)(c) respectively.

42. Subsections (2)(b) and (2)(c) provide the Chief Constable with discretion to revoke an air weapon certificate where the holder has failed to comply with a condition on that certificate, or has failed to surrender the certificate to the police for the purpose of a variation (as required by Section 10(4)). As with subsection (2)(a), in these circumstances the Chief Constable has the power to revoke but is not required to do so.

43. Subsections (3) to (6) set out the process for the revocation of an air weapon certificate. The Chief Constable must provide at least seven days' advance notice of a revocation, within such time the certificate holder must relinquish the certificate and any air weapons or commit an offence (unless a reasonable excuse, for example illness, prevents them from doing so). Subsection (7) provides that, should the certificate holder make an appeal against the decision of the Chief Constable to revoke under section 35, the notice period will be suspended until such time as the appeal is disposed of or abandoned. However, subsection (7)(b) requires that the certificate holder must still surrender their certificate and weapons. If an appeal is successful then the court will quash the notice. If the appeal is rejected then the notice continues to run its remaining period from the date it was suspended.

Permits

Section 12 – Police permits

44. This section makes provision for police permits, which are distinct from air weapon certificates and are intended for use in transient situations where an individual may find themselves in possession of an air weapon, but grant of an air weapon certificate would not be appropriate (for example, where the executor of an estate takes possession of an air weapon when ingathering the deceased's property). In this respect this section is intended to perform a similar function to that of section 7 of the 1968 Act, which allows the police to issue similar

permits to allow the temporary possession of a firearm covered by section 1 of that Act. This section should be read in conjunction with the exemption at paragraph 8 of schedule 1 to the Bill.

45. Subsection (1) sets out that the Chief Constable may issue a permit to allow an individual to possess or acquire and/ or sell an air weapon in the course of business without requiring an air weapon certificate (or, in the case of sale in the course of business, being a Registered Firearms Dealer). These permissions may be applied or omitted from the permit at the Chief Constable's discretion. Subsection (2) states that a police permit must not be granted to anyone prohibited from possessing firearms under section 21 of the 1968 Act, which is explained in more detail at paragraph 20 of this paper.

46. Subsection (3) allows police permits to have variable durations, set at the discretion of the Chief Constable in each case but, as reflects the transient situation for which a permit is to cater, the duration of a permit is not intended to be of the order of that for an air weapon certificate.

47. Subsection (4) provides that applications for a police permit must comply with the requirements set out in regulations made under section 37 or the application will not be treated as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

Section 13 – Visitor permits

48. This and the following related sections provide for a system whereby visitors to Scotland may apply to the Chief Constable for a permit to use, possess, purchase or acquire air weapons while in Scotland, without holding an air weapon certificate. This section should be read in conjunction with the exemption at paragraph 9 of schedule 1.

49. Subsection (4) sets out the criteria for grant of a visitor permit. For individual visitors, subsection (4)(a) requires the applicant to have a good reason, and subsection (4)(c) provides that the visitor must not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. These requirements match those for applicants for an air weapon certificate in section 5, with the omission of the 'fit person' test which would be difficult to apply effectively to visitors from abroad.

50. Subsections (2) and (3) allow for applications by groups of two to 20 people to be made on behalf of the group. The Chief Constable does not have to grant or refuse every member of the group a permit en bloc and can reject some while accepting others. Subsection (4)(b) provides that the Chief Constable must be satisfied that each member of the group individually is to use and possess an air weapon only for one of the listed activities. Each member of the group individually must also not be prohibited from possessing firearms, nor should their possession of an air weapon present a danger to the public. Subsection (5) permits the Chief Constable to require proof from the person applying on behalf of the group that the group has the permission of the owner or occupier of the land in question for the activities mentioned in subsection (4)(b)(i) and (ii).

51. Subsection (6) requires the Chief Constable to attach a condition to a visitor permit granted as part of a group application which restricts the permit holder to taking part in the activity or activities listed in subsection (4)(b) for which the permit has been granted. However, subsection (6) does not apply to a visitor who is part of a group but is aged 14-17, who will be subject to the separate restrictions under section 14.

52. Subsection (7) allows visitor permits to have variable durations, set at the discretion of the Chief Constable, although subsection (8) sets a maximum duration of 12 months.

53. Subsection (9) requires that an application for a visitor permit must comply with the requirements set out in regulations issued under section 37 or it will not be regarded as having been made. The effect is that an application for a permit cannot be considered by the Chief Constable if the application processes set out in the regulations are not followed. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

54. Subsection (10) provides definitions, including specifying that applicants for a visitor permit must be aged 14 or over, and must live outside Scotland but intend to visit (or, be visiting at the time of application).

Section 14 – Visitor permits: young persons

55. This section makes provision where applications for visitor permits are from people under 18 years of age. When read with the definition of “qualifying visitor” in section 13(10) the effect is that this section applies to applicants aged 14 to 17 years.

56. Subsection (2) requires that applications for a visitor permit from an individual aged 14 to 17 years must contain a statement of consent from the applicant’s parent or guardian, set out in a form to be specified in regulations made under section 37. The term “guardian” is defined at section 40(1) and should be construed in light of the relevant jurisdiction of the applicant.

57. Subsections (3) and (4) provide that certain mandatory conditions set out in section 7 must be applied to visitor permits granted to young people, either individually or as part of a group. This means that young people with a visitor permit are subject to equivalent conditions as a young person residing in Scotland who holds an air weapon certificate.

58. Subsection (5) makes equivalent provision to that in section 7(6) as a young person with a visitor permit will not be able to purchase or acquire an air weapon while in Scotland. Subsection (6) makes it clear that a group of young visitors will not be granted a permit for the purpose in section 13(4)(b)(i) – that is for sporting purposes (including shooting live quarry) on private land, which a 14-17 year old holder of an air weapon certificate could not be permitted to do under sections 7(3) and (5).

Section 15 – Police and visitor permits: conditions

59. This section relates to conditions that are applied to police and visitor permits which have been granted under section 12 or section 13 respectively. Conditions will have the same effect as

described in section 6. Subsection (1) sets out that all such permits will be subject to any mandatory conditions, which will be specified in regulations issued under section 37. Subsection (2) allows the Chief Constable to attach additional conditions to police and visitor permits as required.

60. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by subsection (1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13)).

61. Subsections (4) and (5) make it an offence for the permit holder to contravene any condition attached to a permit under this section, and set out the penalty. This offence attracts strict liability.

Section 16 – Police and visitor permits: variation and revocation

62. This section relates to variation and revocation of police permits or visitor permits which have been granted under section 12 and section 13 respectively.

63. Subsection (1) allows the Chief Constable to vary any details on a police permit or a visitor permit after it has been granted, including adding, amending or removing conditions, except any mandatory condition required by section 15(1), or any conditions which must be attached to a visitor permit by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13). Subsection (2) provides that a variation may occur either on the application of the permit holder, or at the Chief Constable's discretion although the Chief Constable is obliged to notify the permit holder of the changes made. Subsection (4) allows the Chief Constable to require a permit holder to relinquish their permit within 21 days, for the purpose of varying it in this way. Guidance is expected to set out that failure to surrender a permit in this way would be grounds for the permit to be revoked.

64. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions required by section 15(1), or any other condition attached as a requirement of this Part (for example, by virtue of the visitor's age (under section 14) and/ or their being part of a group (under section 13)).

65. Subsection (1)(d) allows the Chief Constable to revoke a police or visitor permit at any time, at the Chief Constable's discretion. The Chief Constable must notify the permit holder of the revocation, and subsection (5) requires this notification to provide at least seven days' notice of revocation, within which time the permit holder must relinquish the revoked permit and any air weapons possessed.

66. Subsections (6) and (7) make it an offence for a permit holder to fail, without reasonable excuse, to relinquish a permit for the purpose of revocation within the timescale specified by the Chief Constable.

67. Subsection (8) provides that when a permit holder appeals against a decision to revoke a permit, the notice period for that revocation is put on hold until the outcome of the appeal is known. However, by virtue of subsection (8)(b) the holder must still surrender the permit and any weapons to the Chief Constable. This mirrors the provision at section 11(7).

Section 17 – Event permits

68. This section provides for air weapon event permits. These are distinct from other permits as they are to be required where an event is to take place at which people may borrow, hire use or possess an air weapon for a short timescale, without holding individual air weapon certificates. Examples of situations where an event permit might be granted would be a Highland Games with an air weapon shooting component, or a variant of modern biathlon or pentathlon. This section should be read in conjunction with the exemption at paragraph 10 of schedule 1.

69. Subsection (1) sets out that applications for an event permit should be made to the Chief Constable, by a person responsible for the event. A “person” here includes non-natural (e.g. corporate bodies) as well as natural persons. Event permits are granted at the Chief Constable’s discretion, and permit the borrowing, hiring, possessing and/ or using of air weapons at a specified time and place, for the purpose of participating in a planned event activity as defined at subsection (7). Subsection (2) adds that the Chief Constable may attach conditions to an event permit as required.

70. Subsection (3) requires that an event permit – or a copy thereof – be displayed at the event to which it pertains. This requirement allows a participant at the event to confirm that a permit is in place and the exemption therefore applies when handling air weapons.

71. Subsections (4) and (5) create the offence of failing to comply with any condition attached to an event permit, or failing to display the permit as required by subsection (3) without a reasonable excuse. In either case the offence is committed by the event organiser named on the permit. The offence in subsection (4)(a) attracts strict liability.

72. Subsection (6) states that applications for an event permit cannot be considered unless they comply with the requirements set out in regulations to be made under section 37. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

Air weapon clubs and recreational shooting facilities

Section 18 – Approval of air weapon clubs

73. This section sets out the process by which an air weapon club can be approved by the Chief Constable, to allow its members to benefit from the exemption at paragraph 1 of schedule 1, as well as allowing members to put forward their club membership as evidence that they meet the ‘good reason’ criteria required by section 5(1)(c) for the grant of an individual air weapon certificate.

74. Subsection (1) states that the Chief Constable may, at the Chief Constable's discretion, approve an air weapon club on receipt of an application from a club. Subsection (2) states that an application for an air weapon club approval cannot be considered unless it complies with the requirements set out in regulations to be made under section 37. Separately, section 36(3) has the effect that where an application is made in compliance with the application processes it still cannot be considered by the Chief Constable until the fee is paid.

75. Subsection (3) allows the Chief Constable to withdraw a club approval at any time, by giving notice to the club to that effect.

76. Subsection (4) states that all club approvals will be subject to mandatory conditions, which will be specified in regulations issued under section 37. Subsection (5) provides for the Chief Constable to attach other conditions to air weapon club approvals, which may place positive or negative obligations on the club's secretariat and membership. But, in accordance with subsection (6), the Chief Constable may not attach any conditions which are inconsistent with any mandatory conditions.

Section 19 – Variation of approval

77. This section allows the Chief Constable to vary any of the details on an air weapon club approval after it has been granted or renewed, including adding, amending or removing conditions on the approval (except the mandatory conditions required by section 18(4)). The Chief Constable may vary an approval at any time, but is obliged to notify the club of the changes made.

78. Subsection (2)(a) separately allows the club to request that the Chief Constable make such a variation, for example to provide an updated contact address, or to request the removal or amendment of an outdated condition. Decisions whether to grant such variations are made at the Chief Constable's discretion.

79. Subsection (3) specifies that conditions attached by the Chief Constable must not be inconsistent with or undermine the effect of any of the mandatory conditions (as required by section 18(4)).

Section 20 – Duration of approval

80. Subsection (1) sets the duration of air weapon club approvals at six years, which is consistent with approvals issued to rifle or muzzle-loading pistol clubs under section 15 of the Firearms (Amendment) Act 1988 ("the 1988 Act").

81. Subsection (2) provides that an air weapon club approval will remain valid beyond its stated expiry date, provided that the club has applied to the Chief Constable for a renewal before that expiry date and the Chief Constable has not yet approved or rejected that renewal. The effect of this subsection is that club members can continue to benefit from the exemption at paragraph 1 of schedule 1 when the original approval expires, provided that renewal is being actively considered by the Chief Constable.

82. Subsection (3) provides the Scottish Ministers with the power to change the duration of air weapon club approvals. The regulations will be subject to the affirmative procedure .

Section 21 – Alignment of club approvals

83. This section allows air weapon club approvals to be made co-terminous with a rifle club approval issued by the Scottish Ministers under section 15 of the 1988 Act. This allows for both approvals to be due for renewal at the same time, minimising the workload for the applicant and the Chief Constable. Regulations under section 36 are expected to make provision for a proportionately lowered fee where such air weapon club approvals are granted or renewed for significantly shorter duration. This section does not affect the duration of rifle club approvals.

84. Subsections (1) and (2) allow an air weapon club which already holds a valid rifle club approval to request that the expiry date on an air weapon club approval – if granted or renewed – matches the expiry date on their existing rifle club approval. Because the standard duration for rifle and air weapon club approvals are both set at six years, an air weapon club approval issued in this way will necessarily have a shorter than normal duration when it is first granted.

85. Subsections (3) and (4) allow a club that already holds a live air weapon club approval to request that that approval be renewed before it has run its full six year lifespan, and re-issued on the same date that a new or renewed rifle club approval is granted, so that the expiry dates on both approvals are aligned. This will necessarily mean that the air weapon club approval which was originally paid for on a six year basis will not have lasted for its full duration.

86. References in this section to “rifle club approvals” include clubs approved for the use of small-bore rifles, full-bore rifles and/ or muzzle-loading pistols, all of which are approved under section 15 of the 1988 Act.

Section 22 – Power to enter and inspect club premises

87. This section empowers the Chief Constable – or a delegated officer not below the rank of inspector – to authorise a police constable or member of police staff to enter and inspect any approved air weapon club premises, other than a private dwelling, to ensure that the requirements in this Part are being complied with. Subsection (3) provides that the inspection should, where possible, take place at a reasonable time, which may be any time that the club is operating including in the evenings or at weekends. Subsections (1)(b) and (2) set out that the police constable or member of police staff can inspect anything on the club premises, including requiring electronic information to be reproduced in a way that can be removed from the premises. However inspection should only be of those things for the purpose of ascertaining whether the provisions of the Part or any conditions attached to a club’s approval are being complied with.

88. Subsection (4) requires that the police constable or member of police staff must produce their authorisation if asked before entering a club premises to inspect it in accordance with this section.

89. Subsections (6) and (7) set out the offence of intentionally obstructing a police constable or member of police staff from carrying out their duties when authorised under this section – for example, by refusing them access to the club premises, or by concealing evidence from them.

Section 23 – Requirements for recreational shooting facilities

90. This section and the exemption in paragraph 12 of schedule 1 set out arrangements for commercial recreational shooting facilities where individuals who do not hold air weapon certificates will be able to borrow or hire air weapons for short durations, for a specific purpose – for example, a paintball venue.

91. Subsection (1) sets out that the operator of such a facility (or, where the operator is a non-natural person, must ensure that an individual responsible for the management and operation of the facility) must hold a valid air weapon certificate granted for this purpose, and must display this certificate (or a copy) at the venue. This requirement allows users of the facility to confirm that a certificate is in place and the exemption in paragraph 12 of schedule 1 therefore applies to them.

92. Subsections (2) and (3) make it an offence for anyone to operate a recreational shooting facility without either holding a valid air weapon certificate or ensuring that an individual responsible for the management and operation of the facility holds one for that purpose, or to fail to display that certificate at the facility without a reasonable excuse. The offence in subsection (2)(a) attracts strict liability.

93. Subsection (4) defines a recreational shooting facility for the purposes of the section as a shooting range or gallery, or a facility for combat games (such as paintball), where air weapons are used and which is run for the purpose of making a profit., Subsection (5) makes it clear that approved air weapon clubs are not subject to the requirements of the section.

Transactions involving air weapons and commercial matters

Section 24 – Restrictions on transactions involving air weapons

94. Subsection (1) makes it an offence for any person except a Registered Firearms Dealer under section 33 of the 1968 Act to manufacture, sell, transfer, expose for sale or transfer, repair or test an air weapon by way of trade or business, or to possess an air weapon for one of these purposes. This subsection makes analogous provision to that in section 3(1) of the 1968 Act and adds manufacture, repair and test of air weapons to the activities limited to Registered Firearms Dealers. This offence only applies to sales, transfers etc. by way of trade or business, and does not prohibit private sales between individuals. “Person” here includes non-natural persons (e.g. corporate bodies) as well as natural persons. The offences in this section attract strict liability.

95. Subsection (2)(a), (b) and (d) makes it an offence for anyone to sell or transfer an air weapon (including private sales) without first confirming that the recipient is entitled to have the air weapon by: showing a valid air weapon certificate; demonstrating that the recipient does not need to have a certificate; or, by virtue of being a Registered Firearms Dealer.

96. Subsection (2)(c) specifically allows a Registered Firearms Dealer to sell an air weapon to someone without requiring to see an air weapon certificate or evidence that an exemption applies, provided that the air weapon in question will be sent out of Great Britain without first coming into the possession of the purchaser. Where the purchaser is an individual (as opposed to, for example, a corporate body) the individual must also be aged 18 or over for this paragraph to apply. For example, an overseas visitor to Scotland who does not hold a visitor permit allowing purchase might have a Registered Firearms Dealer export an air weapon directly to their home country.

97. Subsection (3) broadly reflects subsection (2), and makes it an offence to manufacture, repair or test an air weapon for anyone without confirming that they hold a valid air weapon certificate or are a Registered Firearms Dealer or do not need to have a certificate.

98. Subsection (4) sets out the penalties for any of the offences committed in this section.

Section 25 – Requirement for commercial sales of air weapons to be in person

99. This section requires that commercial sales of air weapons are done face-to-face, and is intended to make analogous provision to section 32 of the Violent Crime Reduction Act 2006. Subsection (1) sets out that this section applies to all sales by way of trade or business except those between two Registered Firearms Dealers, and to those where the sale is concluded outside Great Britain (for example mail order sales).

100. Subsection (2) requires that, at the point at which possession of the air weapon(s) is/ are transferred to the purchaser, both the purchaser and the seller – or their representative – must be physically present, otherwise the seller commits an offence. Subsection (3) sets out different categories of person who may act as a representative of the seller for the purposes of this section. A “person” here means a non-natural (e.g. corporate bodies) as well as a natural person. This offence attracts strict liability.

Section 26 – Requirement to notify chief constable of certain sales

101. Subsection (1) sets out that this section applies to sales made under section 24(2)(c), where an air weapon is sold to someone who does not hold an air weapon certificate, to be sent out of Great Britain without coming first into the purchaser’s possession. Subsections (2) and (3) require the Registered Firearms Dealer who made the sale to notify the Chief Constable with the details of the sale entered into the dealer’s register, within 48 hours of the sale being made. Subsections (4) and (5) make it an offence for a Registered Firearms Dealer to fail to provide such notification. This offence applies to all types of “person” and attracts strict liability.

Enforcement

Section 27 – Power of search with warrant

102. This section relates to search warrants issued where there is a reasonable ground to suspect that an air weapon offence has been, is being or is about to be committed or there is a danger to the public safety or the peace involving an air weapon. Subsection (1) sets out that such a warrant may be granted by a sheriff on application by a constable or member of police

staff. Subsections (2) and (3) set out what a constable or member of police staff may do under such a warrant – that is, enter and search premises and seize or detain anything found there in relation to the commission of an air weapon offence. This includes anything in the possession of a person on those premises, and includes the power to require that any electronic information to be reproduced in a way that can be removed from the premises.

103. Subsections (4) and (5) make it an offence for any person to obstruct intentionally a police constable while carrying out a search under this section, and set out the attached penalty. “Person” includes both natural and non-natural persons.

Section 28 – Production of air weapon certificate

104. Subsection (1) empowers a constable to require the production of an individual’s air weapon certificate, or proof that the person does not require to hold a certificate, if the constable believes that an air weapon is in that person’s possession. “Person” in this section includes both natural and a non-natural persons. Subsection (2) allows the constable to seize any air weapons held and require the person’s name and address if a certificate or exemption is not provided.

105. Subsections (3) and (4) make it an offence to fail to provide a name and address, or to provide a false one, when required by this section. This offence attracts strict liability.

Section 29 – Cancellation of air weapon certificate

106. This section allows a court to order the cancellation of an individual’s air weapon certificate when that individual is convicted of one or more of the offences, or is subject to one of the other orders, set out in subsection (1). Orders may make provision about any type of firearm as well as air weapons.

107. Subsection (3) requires the court to notify the Chief Constable of a cancellation made under this section, at which point the Chief Constable must notify the certificate holder and allow 21 days for surrender of the certificate.

108. Subsections (4) and (5) make it an offence for an individual to fail to surrender the certificate within 21 days when required by subsection (3)(b), without reasonable excuse (for example, if they were unable to comply because they were serving a prison sentence).

Section 30 – Forfeiture and disposal of air weapons

109. This section allows a court to order the forfeiture or disposal of any air weapon in the possession of someone who has been convicted of any offence introduced by this Part. Subsection (3) allows a police constable to seize the weapon(s) in question, and subsection (4) allows the Chief Constable to apply to a sheriff to dispose of the weapon(s) in any manner the Chief Constable sees fit, for example by sale at auction, destruction by scrap metal dealer, or transfer to a museum if the weapon is of historic or other significance.

110. Subsection (5) provides that a court may not order the forfeiture or disposal of an air weapon which is possessed by a museum following a conviction for an air weapon offence or

where it was seized or detained by a constable. This provides for situations where, for example, a person is convicted of possession of an air weapon where he or she has stolen it from a museum, or a member of museum staff commits an offence with a museum weapon, so that the court does not inadvertently order forfeiture and thereby prevent the museum from getting return of an air weapon which may be of historic or other significance.

111. Subsections (6) and (7) set out what happens to air weapons where the Chief Constable has revoked an air weapon certificate, police permit or visitor permit on which they are held, but the holder appeals against that revocation. If the appeal is successful then the air weapons must be returned to their owner, and if it is not then the court may order their disposal as the Sheriff considers appropriate.

112. Subsections (8) and (9) set out what happens to air weapons where the air weapon certificate, police permit or visitor permit on which they are held has been revoked and the holder does not appeal, or withdraws their appeal. In such a case the Chief Constable and the owner of the weapon should seek to agree arrangements for disposal (for example, transfer to someone permitted to possess air weapons, or sale through a Registered Firearms Dealer). If an agreement cannot be reached then the Chief Constable may dispose of them as he or she sees fit, which may be by one of the methods outlined in paragraph 111 above. In such a circumstance subsection (10) requires the Chief Constable to notify the owner of the method of disposal, who may then appeal against the Chief Constable's decision under section 35(2)(n).

Offences

Section 31 – Failure to keep air weapons secure or to report loss to police

113. This section makes it an offence for a person in possession of an air weapon to fail to take reasonable precautions for its safe custody, or to fail to immediately report the loss or theft of the air weapon to the Chief Constable. This offence applies to any person who possesses an air weapon and applies to natural and non-natural persons. The offence attracts strict liability.

Section 32 – False statements, certificates and permits

114. This section creates two offences around providing false information in order to obtain an air weapon certificate, permit, or approval, or producing a falsified or improperly altered certificate or other information in order to obtain the repair or testing of an air weapon.

115. Subsection (1) makes it an offence to knowingly or recklessly make a statement which contains false information in order to procure an air weapon certificate, police permit, visitor permit, event permit, or club approval. This could include, for example, providing a false name, or declining to disclose a criminal history when asked. This offence may also be committed by the person verifying the application, if the verifier knew that the information was incorrect or was reckless in verifying false information.

116. Subsection (2) makes it an offence to produce a false or improperly altered air weapon certificate, police permit or visitor permit, or to provide any other false information, in order to purchase or acquire an air weapon, or to have one repaired or tested. This could include, for

example, impersonating an air weapon certificate holder, or amending the details on an expired certificate so that it appeared to still be live.

Section 33 – Time limit for offences

117. This section provides that anyone committing a summary-only air weapon offence could have proceedings brought against them up to three years after that offence has been committed. Section 136 of the Criminal Procedure (Scotland) Act 1995 normally sets a time limit of six months after the offence has been committed. This only applies to summary-only offences, which is all of the offences in this Part except the ones at section 2 and section 24.

Section 34 – Offences by bodies corporate etc.

118. This section provides for cases where there may be an offence committed by a non-natural person such as a body corporate, partnership or unincorporated association (e.g. an auctioneer, carrier firm, operator of a recreational shooting facility etc.). Subsection (2) states that both the individual who committed the specific offence, as well as the corporate entity on whose behalf the criminal act was done, can be proceeded against for the purpose of that offence.

General

Section 35 – Appeals

119. This section allows persons to appeal against various decisions made by the Chief Constable in administering the air weapon licensing regime. Subsection (2) lists the decisions that can be appealed.

120. Subsections (1) and (3) set out that appeals must be made to the appropriate sheriff, as defined by subsection (8), within 21 days of the decision being appealed against. Subsections (4) and (5) state that the sheriff should undertake a full consideration of the merits of the Chief Constable's decision of new, including considering any evidence that the Chief Constable may not have been aware of at the time.

121. Subsection (6) allows the sheriff hearing the appeal either to dismiss it or to direct the Chief Constable to take whatever action the sheriff sees fit to resolve the matter under appeal (for example, ordering the Chief Constable to grant a refused certificate, or not to revoke a certificate).

122. Subsection (7) states that the decision of the sheriff may only be appealed on point of law. The effect of this is that appeals may be made on point of law ultimately to the Inner House of the Court of Session. The "appropriate sheriff" is defined as being the sheriff of the sheriffdom where the appellant resides or, where the appellant resides outside Scotland, the sheriff at Lothian and Borders. The latter is necessary because in certain circumstances an appellant may reside outside of Scotland, for example where a visitor permit has been refused.

Section 36 – Fees

123. This section allows the Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation. Regulations under this section will be subject to the negative procedure in the Scottish Parliament. Subsection (1) provides that a fee can be set in relation to any application for a certificate, permit etc. under this Part, or to any other service provided by the Chief Constable in relation to the Chief Constable's performance of functions under the Part. Subsection (2) provides that the Scottish Ministers may set out a range of fees taking into account different circumstances – for example, lower fees for co-terminous certificates – as well as situations where a fee may be waived entirely. Subsection (2)(c) allows fees to be raised or reduced by reference to factors specified in the regulations, such as inflation.

124. Subsection (3) provides that until the appropriate fee is tendered with an application it is not valid and this means the Chief Constable cannot consider any application under the Bill until the appropriate fee has been paid.

Section 37 – Power to make further provision

125. This section allows the Scottish Ministers to make regulations via secondary legislation setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals. This would include, for example, setting out templates for application forms, granted certificates, and specifying the conditions referred to in section 6. Regulations under this section will be subject to the negative procedure in the Scottish Parliament.

Section 38 – Transitional arrangements for existing certificate holders

126. This section introduces a temporary exemption that applies to persons who are aged 14 years or over and already hold a firearm and/ or shotgun certificate issued under the 1968 Act at the point when the section 2 offence is brought into force. Under subsection (2) such persons can possess and use (but not purchase or acquire) air weapons without holding an air weapon certificate, until their existing firearm and/ or shotgun certificate expires or is renewed. When renewing the firearm or shotgun certificate the individual should apply to the Chief Constable for first grant of an air weapon certificate if it is desired to continue to possess or use an air weapon.

127. This section also applies to firearm and shotgun certificates issued in the rest of Great Britain, so someone from England or Wales who holds valid a firearm and/ or shotgun certificate could visit Scotland with an air weapon without requiring to apply for a visitor permit, subject to the restrictions set out below.

128. Subsection (3) requires that a person making use of this exemption must nonetheless comply with the mandatory conditions for air weapon certificates to be specified in regulations issued under Section 37 – and, in the case of an individual aged below 18, can only use the air weapon for of the purposes mentioned in section 7(5). Subsections (4) to (6) set out the offence, exception and penalty related to non-compliance with the conditions mentioned in subsection (3). This offence attracts strict liability.

129. Subsection (7) sets out that this transitional exemption applies from the day that the offence at section 2 comes into effect, and ends on the day that the individual's firearm and/ or shotgun certificate is renewed or expires. Subsection (7)(b)(ii) provides that should the firearm and/ or shotgun certificate be surrendered, cancelled or revoked before its stated expiry date, the transitional exemption will also end.

130. Subsections (8) and (9) apply where the individual holds both a firearm and shotgun certificate, which are not co-terminous. Subsection (8) states that the transitional exemption ends on the later of the two certificate expiry dates. Subsection (9) states that should either certificate be surrendered the transition exemption continues in force until the remaining one expires or is surrendered, while if either certificate is cancelled or revoked then the transitional exemption ends immediately. Subsection (10) ensures that those making use of the exemption are also able to make use of the exemption in paragraph 16 of schedule 1.

Section 39 – Guidance

131. This section allows the Scottish Ministers to publish, revise and revoke guidance on any aspect of the air weapon licensing regime. Subsection (1) obliges the Chief Constable to take account of this guidance when carrying out his or her duties. Guidance will also be publicly available so that all stakeholders are aware of the Scottish Ministers' view on application of the regime.

Section 40 – Interpretation of Part 1

132. This section provides definitions for various terms used throughout the Part.

133. Subsections (4) and (5) provide that where terms used in the Part are the same as those used in existing UK firearms legislation then the jurisprudence of the courts on interpretation of those terms in the existing UK firearms legislation applies equally to those terms when used in the Bill. The effect of this is to ensure that common terms are interpreted consistently across the Bill and the wider corpus of firearms legislation.

PART 2 – ALCOHOL LICENSING

134. The provisions in this Part amend the licensing regime for alcohol licensing within the Licensing (Scotland) Act 2005.

Licensing objectives

Section 41 – Licensing objectives: protecting young persons from harm

135. Section 41 amends the licensing objective at section 4(1)(e) of the 2005 Act to include young persons. The term young person is defined at section 147 of the 2005 Act and means a person aged 16 or 17. Under the current legislation, Boards must ensure that their decision making is underpinned by the five licensing objectives, including the objective 'to protect children from harm'. This amendment expands this requirement so that Boards must also consider protecting 'young people' from harm.

Statements of licensing policy

Section 42 – Statements of licensing policy: licensing policy periods

136. Section 42 amends section 6 of the 2005 Act in relation to statements of licensing policy. A statement of licensing policy will generally have effect from 18 months after a local government election until 18 months after the next local government election. For example, the next local government elections are scheduled for May 2017 and May 2021 with the result that, in the usual case, the statements of licensing policy would last November 2018 until November 2022.

137. It is possible for the Licensing Board to decide that a statement of licensing policy should come into effect earlier than it otherwise would, and if they do so, then they must publish the licensing policy statement and publicise the date on which the licensing policy statement is to come into effect.

Fit and proper person test

138. The Bill introduces a ‘fit and proper person test’ into the processes for obtaining, reviewing and revoking licenses under the 2005 Act by virtue of sections 45 to 53. In each of these sections, the fit and proper test is considered with regard to the licensing objectives. It also makes some associated changes to the handling of information relating to relevant offences and foreign offences.

Section 43 – Premises licence application: ground for refusal

139. Section 43 amends section 23 of the 2005 Act in relation to the grounds of refusal for a premises licence application. Section 43 provides that it is a ground for refusal at a hearing when determining premises licence applications in section 23 of the 2005 Act, if the Licensing Board considers that, having regard to the licensing objectives, the applicant is not a fit and proper person to be the holder of a premises licence. An amendment is also made to section 23(8) so that, where the Licensing Board refuses a licence on the fit and proper person ground, the Board must state the licensing objective that the ground relates to.

Section 44 – Application to transfer premises licence: ground for refusal

140. Section 44 amends section 33 and 34 of the 2005 Act in relation to grounds for refusal for an application to transfer a premises licence (whether on the application of the current licence holder or someone else). Section 44 provides that it is a ground for refusal at a hearing when determining applications to transfer premises licences under section 33 or 34 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a premises licence. This section also expands the information that can be provided to the Licensing Board by the Chief Constable upon receiving notice of a transfer of a premises licence. If information is provided, the Licensing Board must hold a hearing to determine the application.

Section 45 – Ground for review of premises licence

141. Section 45 makes amendments with regards to review of a premises licence (both on an application by a third party for a review and on a proposal for a review initiated by the Licensing Board itself). Section 45 provides that it is a ground for review of a premises licence, if having regard to the licensing objectives, the licence holder is not a fit and proper person to be the holder of a premises licence. If a review is based on this ground, the review application or proposal must include a summary of the information on which the applicant or the Board based its view that the alleged ground applies.

142. If at the review hearing the Licensing Board is satisfied that the fit and proper person ground for review is established, the Board must revoke the licence. Thereafter the Board must provide notification of its determination to the licence holder and where the decision is taken in connection with a premises licence review application, the applicant. A decision to revoke the licence is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff principal.

Section 46 - Personal licence applications and renewals: ground for refusal

143. Section 46 makes amendment to sections 73, 74 and 78 of the 2005 Act in relation to personal licence applications and renewals. Section 46 provides that it is a ground for refusal at a hearing when determining personal licence application or personal licence renewal application under section 74 of the 2005 Act if the Licensing Board considers that, having regard to the licensing objectives, the transferee is not a fit and proper person to be the holder of a personal licence.

144. Subsection (2) provides that on giving a notice under subsection (3)(a) or (b) of section 73 of the 2005 Act, the Chief Constable may also provide to the Licensing Board any information in relation to the applicant that the Chief Constable considers may be relevant to consideration of the application by the Board.

145. Section 46 also inserts a new section 73A into the 2005 Act to provide that where a Licensing Board receives a personal licence application, the Board must give notice of it, together with a copy of the application, to a Licensing Standards Officer for the Board's area. A Licensing Standards Officer may, within 21 days of the date of receipt of this notice, respond to the notice by giving the Licensing Board any information in relation to the applicant that the Officer considers may be relevant to consideration of the application by the Board. If information is supplied to the Board by the Chief Constable or by a Licensing Standards Officer, the Board may hold a hearing.

Section 47 – Personal licence holders: procedure on receipt of notice of conviction

146. Section 83 of the 2005 Act provides the procedure that a Licensing Board must follow where they receive notice of a conviction (or otherwise become aware of a conviction) of a personal licence holder. The Board must notify the Chief Constable of the conviction and, where the existence of the conviction is confirmed by the Chief Constable, the Board must hold a hearing to review the licence.

147. Section 47 of the Bill amends section 83 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

Section 48 – Personal licence holders: conduct inconsistent with the licensing objectives

148. Section 84 of the 2005 Act provides the procedure that a Licensing Board must follow when, in the course of reviewing a premises licence under section 38 of the 2005 Act, they find that a personal licence holder was acting on the premises in a manner not consistent with the licensing objectives. Where the Licensing Board makes such a finding a hearing must be held where the Board can revoke, suspend or endorse the licence if they believe it necessary to do so.

149. Section 48 of the Bill amends section 84 to enable a Licensing Board to consider at such hearings whether the licence holder is a fit and proper person to hold a personal licence. Where the Board are satisfied the person is not a fit and proper person to hold a personal licence, they must make an order revoking the licence. A decision to make such an order is added to the list of decisions in schedule 5 to the 2005 Act that are appealable to the sheriff.

Relevant offences and foreign offences

Section 49 – Premises licences: procedure in relation to relevant offences or foreign offences

150. Section 49 amends section 44 of the 2005 Act so that when a Licensing Board receives a notice of conviction in relation to a premises licence holder (or a person connected to the premises licence holder) they must initiate a review of the premises licence and hold a hearing only where the Chief Constable has made a recommendation under section 44(5), namely that having regard to the conviction specified in the notice, it is necessary for the purposes of any of the licensing objectives that the premises licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either make a premises licence review proposal, (and hold a hearing), or decide to take no further action in relation to the conviction.

Section 50 – Personal licences: procedure in relation to relevant offences or foreign offences

151. Section 50 amends section 83 of the 2005 Act so that when a Licensing Board receives notice of a conviction in relation to a personal licence they must hold a hearing only where the Chief Constable has made a recommendation under section 83(5), namely that having regard to the conviction specified in the notice it is necessary for the purposes of any of the licensing objectives that personal licence should be varied, suspended or revoked. Where the Chief Constable has not made such a recommendation then the Board may either hold a hearing, or decide to take no further action in relation to the conviction.

Section 51 – Relevant offences and foreign offences: spent convictions

152. Section 51 repeals section 129(4) of the 2005 Act which prohibits any consideration of a conviction for a relevant offence or foreign offence if it is spent for the purposes of the Rehabilitation of Offenders Act 1974. This amendment will make it possible for spent convictions to be brought to and considered by Boards as part of their decision-making.

Supply of alcohol to a child or young person

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

153. Subsection (1) of this provision inserts section 104A into the 2005 Act making it a criminal offence for a person, other than a child or young person, to buy or attempt to buy alcohol for or on behalf of a child or to give or otherwise make available alcohol to a child.

154. It also inserts a new section 104B which makes it a criminal offence for a person, other than a child or young person, to buy, attempt to buy, give or otherwise make alcohol available, to a young person. “Young person” is defined in section 147 of the 2005 Act as a person who is 16 or 17 years of age.

155. It is not an offence under either section however to buy alcohol for, or give alcohol to, a child or young person, a) for consumption other than in a public place or b) for the purposes of religious worship.

156. In addition, it is not an offence under section 104B – if beer, wine, cider or perry is bought, given or made available to the young person along with a meal to be consumed in relevant premises.

157. These exceptions do not apply to the offences of buying alcohol on behalf of a child or young person.

158. There is also a defence to the section 104B offence if the person who bought or gave the alcohol did not know the young person was under 18 years.

159. A person convicted of either offence may receive a fine, not exceeding level 5 on the standard scale, imprisonment for up to three months, or both.

160. In both sections, “public place” is defined as relevant premises, any place to which public have access to at the relevant time (on payment or not), and any place to which the public do not have access but which the child or young person unlawfully gains access to. The term “relevant premises” is defined in section 122 of the 2005 Act.

161. Subsection (2) repeals subsections (4), (5) and (7) of section 105 of the 2005 Act (and consequentially renames that section), as the substance of those subsections is replicated in new sections 104A and 104B.

Miscellaneous

Section 53 – Meaning of “alcohol”: inclusion of angostura bitters

162. This provision amends section 2 of the 2005 Act to include angostura bitters within the definition of “alcohol”. Angostura Bitters were exempt from Excise and were excluded from the 2005 Act definition of alcohol. However, they are now liable for Excise duty and have been brought into the definition of alcohol.

Section 54 – Overprovision

163. Section 54 amends section 7 of the 2005 Act which deals with the duty of Licensing Boards to assess overprovision, and provides that where a Board determines the “localities” for the purposes of the Act then it may determine that the whole of the Board’s area is a single locality.

164. Section 7 is further amended so that the Board may have regard to (among other things) the number, capacity and licensed hours of licensed premises in the locality. Amendments are also made to allow these wider factors to be taken into account at:

- section 23(5)(e) (refusal of a premises licence on grounds of overprovision), and;
- section 30(5)(d) (refusal to vary premises licence on grounds of overprovision).

Section 55 – Duty of Licensing Boards to produce annual financial report

165. This provision inserts section 9A into the 2005 Act requiring Licensing Boards to produce an annual financial report on their alcohol licensing activities.

166. Section 9A(1), (2) and (3) place a duty on Licensing Boards to prepare and publish the annual financial report no later than three months after the end of the financial year. It should contain details of relevant income received by the Licensing Board during the financial year; details of relevant expenditure incurred in respect of the Board’s area during the year; and an explanation of how the amounts in the report were calculated. The Board is required to break down its figures into the component sources of relevant income and expenditure. Relevant income for example would be premises licence application fees, personal licence fees or fees charged in respect of an application to vary a premises licence and relevant expenditure would for example be the salary cost of a Licensing Standards Officer in respect of his duties under the alcohol licensing regime or the costs for the Board in administering the alcohol licensing regime

167. Section 9A (4) and (5) provide that the aforementioned annual financial report may also include such other information about the performance of the Licensing Board’s functions as they consider appropriate, and that at the request of the Licensing Board the relevant council must provide the Board with such information as the Board may reasonably require for the purpose of preparing a report under this section. Subsection (6) gives the Scottish Ministers an order making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

Section 56 –Interested parties

168. This provision amends section 40A (Connected persons and interested parties: licence holder's duty to notify changes,) to remove the references to interested parties, including within the section title. It also removes a requirement to notify changes of interested parties. The licence holder now only requires to provide notification in respect of connected persons.

169. It also amends the definition of an interested party at section 147(5) by permitting that a premises manager can be an interested party. This has the effect of allowing the premises manager to be subject to vicarious liability for offences under s141B.

Section 57 – Personal licences: grant, duration and renewal

170. This provision amends section 74 of the 2005 Act regarding the determination of a personal licence application. Section 74(3) provides conditions which must be met before an application can be granted. This provision amends section 74(3)(c) which currently states a personal licence cannot be granted if one has been revoked in the last five years. This provision amends section 74(3)(c) to provide that the provision is not applicable to persons who have had a personal licence revoked under section 87(3) of the 2005 Act. Accordingly, if a personal licence is revoked under section 87(3) the person will no longer have to wait for five years to elapse before applying for a new personal licence.

171. This provision also amends section 77(8) of the 2005 Act to increase the length of time prior to the expiry date of a personal licence that the relevant Licensing Board must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed. The period of time is increased to nine months before the expiry date of a personal licence.

172. The provision amends section 78 of the 2005 Act to increase the length of the time period in which a personal licence holder may apply to the relevant Licensing Board for renewal of the licence, as well as to increase the length of the period provided for the Licensing Board's consideration of this application. The period of time to submit an application under section 78(1) is now within the nine months period beginning 12 months before the expiry date of the licence.

173. Finally section 84A of the 2005 Act is amended to provide that if a Chief Constable reports conduct inconsistent with the licensing objectives to the relevant Licensing Board, the whole of section 84(8) now applies in relation to an order made under subsection (2) of this section as opposed to only section 84(8)(a). This means that the Board making the order must now notify the order to the licence holder, the Board who gave the original notice and the Board who issued the licence, if these are different Boards.

Section 58 – Processing and deemed grant of applications

174. Section 58 inserts a requirement for Licensing Boards to issue an acknowledgement for relevant applications, where the application meets the requirements. The requirements for an application form are those imposed under the 2005 Act or any other relevant enactment in respect of the type of application.

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.”

205. Section 45B also provides that local authorities must have regard to any guidance issued by the Scottish Ministers.

Miscellaneous and general

Section 69 – Deemed grant of applications

206. The section modernises and expands the requirement for licensing authorities to deal with matters expeditiously. Failure to do so has the result that the application will be deemed to have been authorised. The expanded requirement also includes applications for variations to a licence so that a failure to take a decision within the specified timescale would have the effect that the variation would be deemed to have been agreed.

207. Section 3 of the 1982 Act is amended to modernise the language to provide greater clarity of the requirement to consider an application within three months and then reach a final decision within a further six months.

208. Section 3(4) is amended to include variations and to clarify the language used to describe the effect of a failure of a licensing authority to reach a decision.

209. A new subsection (4A) is inserted in section 3 of the 1982 Act to specify the duration of a licence or temporary licence granted under the ‘deemed grant provisions’.

210. A new subsection (4B) is inserted in section 3 of the 1982 Act to clarify that a licence issued under these provisions is not immune to the separate powers of a licensing authority to vary, suspend or revoke licences or to consider renewal.

211. A new section 45C is added to the 1982 Act to replicate these provisions in relation to sex shops and sexual entertainment venues.

Section 70 – Procedure for hearings

212. Section 70 amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create an order-making power to allow the Scottish Ministers to make provision about hearings in relation to activities licensed under Part 1 to 3 of the 1982 Act. The regulations may cover notice of hearings, rules of evidence, representation, timescales for steps in the procedure, and liability for expenses. The regulations may differentiate between different purposes, for example, different types of licence.

Section 71 – Conditions for Part 3 licences

213. This section recreates powers that allow the Scottish Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act. The condition setting power is broad, would be specified by Order and could encompass different licences and particular purposes and sets of circumstances or cases.

214. The section also allows local licensing authorities to produce standard conditions to which licences issued by them under this Part would be subject. The conditions would have no effect until they are published and cannot be inconsistent with the mandatory conditions. Standard conditions can be varied or dis-applied for particular applications, although a variation could also not be inconsistent with a mandatory requirement.

Section 72 – Civic licensing standards officers

215. Section 72 inserts a new Part 3A into the 1982 Act. This introduces a statutory requirement for a local authority or licensing authority to appoint an individual or individuals in a new role, referred to as a ‘Civic Licensing Standards Officer’. These new Civic Licensing Standards Officers will have the same powers and duties as an ‘authorised officer’ within the 1982 Act but will also have specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

Section 73 – Electronic communications under the 1982 Act

216. The section amends Schedule 1 of the 1982 Act to permit a licensing authority to determine to receive electronic communications for a variety of matters. The matters are:

- (a) applications for the grant or renewal of a licence under paragraph 1,
- (b) objections or representations under paragraph 3,
- (c) notifications of a change to a licence under paragraph 9.

217. Where a licensing authority makes a determination to receive electronic communications they must specify the form of electronic communication, the address to be used and any means of authentication that may be used in addition to an electronic signature.

218. The section clarifies that an electronic communication meeting the requirements set out will meet any requirement under schedule 1 for a communication to be in writing and signed.

219. A licensing authority may also determine to make communications in respect of the giving of notices or the giving of reasons electronically. The giving of reasons or notices electronically would only be acceptable if the intended recipient has agreed to receive communications in such a form and has specified an address. If the requirements are satisfied then any requirement for a notice or reasons to be given in writing will be met.

220. Determinations in relation to electronic communications may be made for different purposes and for different licences.

221. Similar amendments regarding electronic communications are made to Schedule 2 in respect of sex shops and sexual entertainment venues.

PART 4 – GENERAL

Section 74 – Interpretation

222. Section 74 defines various expressions used in the Bill.

Section 75 – Regulations

223. Section 75 provides procedural requirements for orders and regulations made under the Bill.

Section 78 – Commencement

224. Section 78 provides that the provisions of the Bill (except those which come into force at the beginning of the day following the day on which the Bill receives Royal Assent) will come into force on a date or dates determined by order, made by Ministers.

Section 79 – Short title

225. Section 79 gives the short title of the Bill.

SCHEDULE 1: EXEMPTIONS

Paragraph 1 – Approved air weapon clubs

226. This paragraph exempts members of an air weapon club approved by the Chief Constable under section 18 from the requirement to hold an air weapon certificate, for the purpose of possessing or using an air weapon for target shooting at that club. The air weapon in question may be owned by the club and held on an air weapon certificate issued to the club secretary, or borrowed from elsewhere (for example another club member who holds their own air weapon certificate).

227. Sub-paragraph (b)(i) sets out that this exemption applies while the member is target shooting at other approved air weapon clubs, or at an event or competition, provided that the shooting is in connection with their club membership. Sub-paragraph (b)(ii) also allows possession and use of an air weapon in connection with club target shooting, for example to allow a club member to transport an air weapon owned by the club between shooting venues.

228. Sub-paragraph (c) requires that, where an air weapon club member is aged below 14, they must be supervised by another club member aged 21 or over for this exemption to apply. There is no lower age limit to the application of this exemption.

Paragraph 2 – Registered firearms dealers and their employees

229. This paragraph exempts firearms dealers who are registered with the Chief Constable under section 33 of the 1968 Act from requiring to hold an air weapon certificate when carrying out their business.

230. Sub-paragraph (1)(b) extends this exemption to the Registered Firearms Dealer's employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer's usual place of business). Sub-paragraphs (3) and (4) allow for an individual to borrow an air weapon from a Registered Firearms Dealer and use it on land the dealer occupies provided the individual is supervised by the dealer or an employee of the dealer. Where the individual is under 14 then the supervisor must be aged 21 or over.

231. Sub-paragraph (1)(b) extends this exemption to the Registered Firearms Dealer's employees, and sub-paragraph (2) allows this exemption to apply anywhere (i.e. not just at the dealer's usual place of business).

Paragraph 3 – Auctioneers

232. This paragraph exempts auctioneers and their employees from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession, acquisition and purchase of air weapons, not their use.

233. Sub-paragraph (2) extends this exemption to allow an auctioneer to sell an air weapon by way of trade or business without committing the offence at section 24, provided that the auctioneer holds a police permit issued under section 12.

Paragraph 4 - Carriers and warehouse keepers

234. This paragraph exempts carriers and warehouse keepers, and their employees, from requiring to hold an air weapon certificate when carrying out their business. This exemption only allows the possession of air weapons, not their use, acquisition or purchase.

Paragraph 5 – Artistic performers

235. This section allows an individual taking part in a theatrical performance, a rehearsal, or a film production – as defined by sub-paragraph (2) – to possess and use an air weapon without holding an air weapon certificate. This exemption only applies to the performer involved, and only for the duration of the performance. This exemption does not permit purchase or acquisition of an air weapon.

Paragraph 6 – Cadet corps

236. This paragraph exempts members of a cadet corps approved under section 54(5)(b) of the 1968 Act, and their instructors, from requiring to hold an air weapon certificate for the purposes of drilling and target shooting with air weapons.

Paragraph 7 – Bodies corporate etc.

237. This paragraph exempts corporate bodies from possessing, purchasing or acquiring an air weapon provided that a natural person who is an officer of the body listed in sub-paragraph (2) has an air weapon certificate.

Paragraph 8 – Holders of police permits

238. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 12. Sub-paragraph (2) extends this exemption to allow a permit holder to sell an air weapon by way of trade or business without committing the offence at section 24.

Paragraph 9 – Holders of visitor permits

239. This paragraph sets out the specific exemption that applies to a holder of a permit issued under section 13.

Paragraph 10 – Authorised events

240. This paragraph sets out the specific exemption that applies to attendees at an event covered by a permit issued under section 17. Sub-paragraph (1)(b) specifies that the attendee must be using the air weapon to engage in an activity at the event for the exemption to apply. Use of an air weapon at an event when not engaging in event activities is therefore not exempted from the section 2(1) offence.

Paragraph 11 – Supervised use of air weapons on private land

241. This paragraph allows a person without an air weapon certificate to borrow an air weapon from an individual who holds a valid air weapon certificate, and to possess and use it while on private land and under the supervision of the certificate holder, or their employee. Any use must be in line with the conditions attached to the relevant air weapon certificate.

242. Sub-paragraph (2)(d) provides that if the borrower is younger than 14, then the supervisor must be aged 21 or over. There is no lower age limit to the application of this exemption.

Paragraph 12 – Use of air weapons at recreational shooting facilities

243. This paragraph sets out the specific exemption that applies to participants at a commercial recreational shooting facility which complies with the requirements at section 23. Sub-paragraph (1)(b) specifies that this exemption only applies while the user is on site – thus they cannot remove air weapons from the premises. Sub-paragraph (2) extends this exemption to apply to employees working at the recreational shooting facility.

Paragraph 13 - Museums

244. This exemption relates to museums which hold air weapons as part of their collection. Sub-paragraph (1)(b) sets out that, for this exemption to apply, the museum must either be approved by the Scottish Ministers under Schedule 1 to the 1988 Act (which will be the case if it already holds section 1 or 2 firearms), or, if the only firearms held by the museum are air weapons to which section 1 of the 1968 Act does not apply, a responsible person as defined by sub-paragraph (2) must hold an air weapon certificate.

245. Provided that either of these requirements is met the employees of the museum are exempted from requiring individual air weapon certificates to possess, purchase or acquire air weapons in the course of their duties at the museum.

Paragraph 14 - Air weapons on ships

246. This exemption applies to the possession and use of air weapons while on board a ship, provided that the air weapons are part of the ship's equipment. This might cover, for example, air weapons for pest control, or an air weapon range on a cruise liner. An air weapon certificate or police permit would be required to remove an air weapon from the ship, or to purchase or acquire new air weapons for it.

Paragraph 15 – Purchase of air weapons for delivery outwith Great Britain

247. This paragraph sets out the specific exemption that allows someone who does not hold an air weapon certificate to purchase an air weapon in the manner set out in section 24(2)(c), without committing the offence at section 2(1) of purchasing an air weapon without a valid air weapon certificate.

Paragraph 16 – Loaning of air weapons for exempted purposes

248. This exemption allows the holder of an air weapon certificate (or a person who does not hold a certificate but is entitled to possess or use an air weapon without committing an offence by virtue of another exemption) to loan an air weapon by way of trade or business to another individual who does not hold an air weapon certificate, and to possess air weapons for the purpose of loan by way of trade or business, without committing the offences at section 24(1) and (2). Section 24 otherwise limits such transactions to Registered Firearms Dealers. This exemption only applies provided that the recipient of the loaned air weapon will possess or use the air weapon in accordance with one of the exemptions in schedule 1. For example, this would allow an operator of a recreational shooting facility to loan weapons for the exemption at paragraph 12, or a theatrical armourer to loan weapons for the exemption at paragraph 5.

Paragraph 17 – Public servants carrying out official duties

249. This paragraph exempts various categories of public servants listed at sub-paragraph (3) from requiring an air weapon certificate. This exemption relates to members of the police or armed forces who may be required to use or take possession of air weapons in connection with their duties (for example, a police constable seizing an air weapon, or a police forensic examiner testing its muzzle energy). This exemption only applies while the individual is carrying out their role as a public servant, and only when they are required to handle an air weapon in the fulfilment of their duties.

Paragraph 18 – holders of certificates or permits with conditions

250. This paragraph allows an air weapon certificate, visitor or police permit holder to make use of the exemptions in the schedule notwithstanding any condition which may be attached to the certificate or permit. This means that a person who holds, for example, a visitor permit that permits use and possession, can take advantage of the exemption in paragraph 15 to purchase an

air weapon for delivery to that person's home country. Or, an air weapon certificate holder whose certificate has a condition limiting them to shooting for pest control purposes could separately be a member of an approved air weapon club, and shoot at the club under the exemption in paragraph 1.

SCHEDULE 2: MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

PART 1 – AMENDMENTS AND REPEALS RELATING TO PART 1

Paragraph 1 – Firearms Act 1968 (c.27)

251. This paragraph amends various provisions of the Firearms Act 1968 as it applies in Scotland. Sub-paragraph (2) repeals the offence limiting sales of air weapons to Registered Firearms Dealers, as this requirement is recreated by section 24 of the Bill. Sub-paragraph (8)(b) also extends the definition of Firearms Dealer to include anyone who manufactures, repairs or tests air weapons by way of trade or business. This brings the definition of Firearms Dealers in Scotland in line with the commercial offences being introduced at section 24 of the Bill. Sub-paragraphs (3) to (8) amend and repeal various provisions relating to use of air weapons by young people, as these provisions are superseded by the creation of an air weapons licensing regime. Sub-paragraph (9) amends the table of offences and penalties in the 1968 Act accordingly.

Paragraph 2 – Violent Crime Reduction Act 2006 (c.38)

252. This paragraph repeals section 32 of the Violent Crime Reduction Act 2006 in Scotland, which is restated by section 25 of the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Air Weapons and Licensing (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 14 May 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Policy Memorandum, which is published separately, explains in detail the background to the Bill and the policy intention behind the Bill. The purpose of this Financial Memorandum is to set out the costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

3. The purpose of the Bill is to protect public safety by creating a new licensing regime for air weapons and to improve aspects of locally led alcohol and civic government licensing in order to preserve public order and safety, reduce crime, and to advance public health. It will give local communities the power to regulate sexual entertainment venues in their areas.

4. This Financial Memorandum sets out the costs and savings associated with the Bill under the following headings:

- Air weapons
- Alcohol licensing
- Civic licensing:
 - Taxis and private hire cars
 - Metal dealers
 - Public entertainment venues
 - Sexual entertainment venues
 - Miscellaneous and general.

5. Under each of these headings substantive costs are then reported against the different bodies involved.

Air weapons

6. The Bill introduces a licensing regime for air weapons, which will be administered by the Police Service of Scotland (Police Scotland).

7. The Bill sets out a licensing regime, which aims to be appropriate, recognisable and practicable both for the police, who will be the licensing authority, and for those in the legitimate shooting community.

8. The overarching policy objective of this Part of the Bill is not to ban air weapons, but to ensure that only those people who have a legitimate reason for owning and using one should have access to them.

9. There will be a long lead-in time to full commencement of the measures in Part 1 to ensure as many people as possible are aware of the new regulations in relation to air weapons and to allow for a hand-in period before the primary criminal offence comes into force. There will be no compensation scheme for old or unwanted weapons which are handed in. Once the Bill is fully in force it will be an offence to have an air weapon without a certificate or an exemption and the police will seize weapons as and when offences are detected.

Alcohol licensing

10. Alcohol licensing, along with Minimum Unit Pricing and NHS investment in prevention, treatment and support measures, is part of the broader Government Strategy “Changing Scotland’s Relationship with Alcohol (2009)”. There is a significant social and financial cost of problem drinking. It is estimated that alcohol misuse costs the Scottish economy around £3.6 billion every year particularly in terms of alcohol related crime, mortality and hospital admissions.¹

11. It is vital that police and Licensing Boards have the powers they need to reduce crime and preserve public order so that people can lead productive lives within safe and secure communities.

12. Alcohol licensing is not however intended to prohibit responsible consumption nor to undermine the economic interests of the alcohol trade.

13. The Bill seeks to improve the effectiveness of the alcohol licensing regime set out in the Licensing (Scotland) Act 2005 (“the 2005 Act”) as added to by the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc. (Scotland) Act 2010 and the Alcohol (Minimum Pricing) (Scotland) Act 2012, as well as secondary legislation.

Summary of provisions

14. Under the current licensing regime, it is not an offence for adults to supply alcohol to someone under the age of 18 outwith a licensed premises. This allows outdoor drinking dens of young people where those in the group who are aged 18 or over buy alcohol for younger members. The Bill closes this loophole and gives the police the powers they need to disrupt these drinking dens. This fulfils a manifesto commitment.

15. The Bill will provide Licensing Boards with powers to consider a broader range of information when making licensing decisions. It will re-introduce a ‘fit and proper’ test into alcohol licensing. This is intended to give Boards a greater ability to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence. The 2005 Act currently focuses on the use of relevant offences and foreign offences to assess the suitability of applicants and licence holders. It will also, in time, allow Boards to consider spent convictions although the existence of spent convictions would not

¹ The Societal Cost of Alcohol Misuse in Scotland. <http://www.scotland.gov.uk/Publications/2009/12/29122804/0>

necessarily bar an applicant from being granted a licence. The Boards will consider each case on its own merits as they currently do with unspent convictions for relevant offences.

16. Licensing Boards charge fees for a range of services such as applications for premises licences, payment of annual fees for premises licences, applications for personal or occasional licences, and transferring or varying existing licences. Some of these are set by local Licensing Boards and others are centrally set by the Scottish Ministers.

17. The fees regime is intended to reflect the Scottish Government's intention to make the system self-funding. There is, however, currently no transparent accounting statement of the direct and indirect costs of Licensing Boards and the level of fees have therefore been a source of dispute with the trade. The Alcohol Fees Review Group, including representatives of both the trade and Licensing Boards, recommended in 2013 that Boards should be under a duty to produce an annual financial report. The Bill includes provision for this. Boards should be transparent about these costs to demonstrate that the fees they set are based upon cost recovery (unless they choose to operate to a deficit). As Licensing Boards are already under an obligation to ensure their fee income is broadly equivalent to their costs, this duty will simply require them to make public the calculations that are already being carried out.

18. The Bill will also take forward a range of technical recommendations to clarify and improve the operation of the current alcohol licensing legislation to ensure effective regulatory processes and to reduce unnecessary burdens on business. Included in this is the automatic granting of an application that has not been considered within a set period. This confirms compliance with the EU Services Directive².

Civic licensing

19. The Bill seeks to improve the effectiveness of the civic government licensing regimes administered by local authorities, adjusting the regimes for taxi and private hire cars and metal dealers, addition of theatre licensing to the public entertainment venue licensing regime and the creation of a new licensing regime for sexual entertainment venues.

Sexual entertainment venues

20. There are a number of concerns around venues offering sexual entertainment such as lap dancing. There has been some suggestion that sexual entertainment may be associated with a risk of criminality and, as with other forms of public entertainment (licensed under a separate regime), there are also risks of adverse impacts on neighbours and general disorder. There is also concern regarding the working conditions in sexual entertainment venues and the possible financial exploitation of dancers. Finally, there is the view of violence against women stakeholders that sexual entertainment is a form of commercial sexual exploitation and is, therefore at odds with the Scottish Government's position on violence against women.

² Directive 2006/123/EC <http://eur-lex.europa.eu/legal-content/EN/ALL/?jsessionid=HYH1Tq7cPJtL2sVC3Byj14RBSbXpwCfyY07lpJ8BqdL2tqrK61PC!-1713346224?uri=CELEX:32006L0123>

21. A specific system of licensing for sexual entertainment was considered by the Scottish Parliament as part of the Criminal Justice and Licensing (Scotland) Act 2010, through an amendment proposed by Sandra White MSP. Whilst the Scottish Government supported these proposals, they were rejected by the Scottish Parliament due to concerns around the effect of operating a dual licensing system, with sexual entertainment being regulated under a regime of its own as well as under the alcohol licensing system. In addition, there was concern that as the proposals were introduced late in the Bill process they had not had the opportunity for appropriate scrutiny.

22. However, since 2010, court judgements have called into question the ability of Licensing Boards to set conditions beyond the tight focus on the sale of alcohol. This leaves uncertainty in the regulation of sexual entertainment, with many Licensing Boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate control, and that there is no effective alternative in place.³

23. A specific licensing regime for sexual entertainment venues offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances. This would include the ability to set a desired number of sexual entertainment premises for their area (and for that number to be zero). It would also include the ability to set conditions that control the conduct of activities on premises in their area.

24. The Bill creates a new licensing regime for sexual entertainment venues. The new regime falls into the civic licensing arrangements under the Civic Government (Scotland) Act 1982 (“the 1982 Act”) and uses, in part, the architecture of existing provisions for the control of sex shops.

25. The provisions of the Bill require a licence for premises operated as sexual entertainment venues for financial gain. Definition is provided as to what is meant by sexual entertainment both to capture what is intended to be licensed, such as lap dancing, strip shows, peep shows, live sex shows, but to avoid licensing what is not, such as artistic performances. Powers are included to specify exceptions from the licensing requirement to remedy any unanticipated activity falling within the licensing ambit.

Metal dealers

26. Metal theft has been a growing problem in recent years. A variety of measures have been taken to tackle the problem including a dedicated task force which has been established by The British Transport Police, the announcement of a tougher prosecution policy by the Crown Office and Procurator Fiscal Service and the establishment of a national metal theft working group to co-ordinate action against metal theft.

27. An important feature of metal theft is that the consequences of a metal theft are out of all proportion to the scrap value of the metal stolen. The costs of metal theft include the cost of replacement and repair, wider economic costs through delay and disruption to business and

³ *Brightcrew Ltd v City of Glasgow Licensing Board* [2011] CSIH 46]
<http://www.scotcourts.gov.uk/opinions/2011CSIH46.html>

members of the public and in some cases there are emotional costs. At the extreme, metal thefts have resulted in loss of life and serious injury.

28. Scrap metal dealers provide a valuable service to the community by providing a means for unwanted metal to be recycled into a useful raw material for manufacturers. Nevertheless the scrap metal industry does provide a route by which a metal thief can convert stolen goods into cash.

29. The Bill seeks to improve the current regulation of metal dealers under the 1982 Act as part of the broader strategy to combat the significant disruption, danger and costs associated with metal theft, whilst supporting the legitimate scrap metal trade.

30. The Bill removes the exemption warrant system that exempted dealers with a larger turnover from the licensing requirements. It will limit payment for metal by metal dealers to prescribed methods i.e. bank transfer or cheque. By removing the option of paying in cash it seeks to ensure that a metal thief is not attracted by the possibility of being paid in an anonymous fashion. Instead, transactions will be traceable and auditable. It also makes provisions designed to improve standards for identification of customers and record keeping.

31. The Bill also removes the mandatory requirement that dealers should not process metal for 48 hours after receiving it. It is felt that this step is impractical for many dealers and should not be a compulsory requirement (though local licensing authorities could impose it on a case by case basis).

Taxis and private hire cars

32. Taxis and private hire car services are licensed to preserve public safety and order and to prevent crime. Local authorities are responsible for the taxi and private hire car licensing regimes following the framework provided for in the 1982 Act. They have discretion in applying a local regime that best meets the specific requirements of their local area and can take account of the views of both customers and trade.

33. The Bill aims to bring greater consistency between and within taxi and private hire car licensing regimes as well as expanding the scope of the licensing regime and tightening the regulation. This is with a view to addressing concerns that the legitimate trade is being unfairly challenged in some areas by businesses and individuals circumventing the current licensing regime with a consequential effect on public safety.

34. The provisions of the Bill will give local authorities the power to refuse to grant private hire car licences on grounds of overprovision. It extends taxi driver testing to include private hire car drivers and removes the 'contract exemption', bringing hire cars used on contracts into the licensing regime. These provisions, in part, acknowledge that in parts of the country, taxis, private hire cars and contract hire cars are essentially operating in a very similar market. Some of the distinctions between their mode of operation - for example pre-booking versus ranks and hailings - have been blurred with changes in technology.

Public entertainment venues

35. The Bill abolishes ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulates theatres through the existing public entertainment licencing regime provided for in the 1982 Act. This simplification intends to see theatres transferred to a lighter touch licensing regime which still ensures public safety.

36. Currently theatre licensing (under the 1968 Act) is a mandatory licence that requires all premises at which public performances of a play are staged to hold a licence. No allowance is made for the size of the premises or the potential audience. This contrasts with other forms of public entertainment (licensed under the 1982 Act) which is a flexible system that allows local licensing authorities to determine in a local context how licensing should be regulated in their area. By bringing theatre under the public entertainment licensing arrangements greater flexibility will be allowed. It will be open to a local licensing authority to exclude premises offering plays only to very small audiences from the licensing requirement. It also allows greater consistency and legislative clarity by bringing theatres within the same public entertainment licensing arrangements as other forms of the arts such as concerts and comedy shows.

Miscellaneous and general

37. The Bill includes a number of provisions aimed at improving the operation of all civic government licensing regimes. This includes the power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings. This power will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted both across local licensing authorities and across civic and alcohol regimes. The Bill also includes a new role of civic licensing standards officer (CLSO) with specific functions in relation to providing guidance and checking compliance. This is modelled on the successful licensing standards officer (LSO) role within the 2005 Act and is intended to ensure a statutory minimum in the support local authorities provide in relation to licensing regimes under the 1982 Act. The Scottish Government is aware that many local licensing authorities already have in place high quality support of this kind and the Scottish Government’s intention is to not disrupt good practice where it is happening.

38. The Bill adds to the situations where an application for variation of a licence is deemed to be granted in circumstances where the local authority has not decided on an application or sought an extension from the sheriff within a set period. This is intended to ensure compliance with the EU Services Directive.

PART 1 – AIR WEAPONS

INTRODUCTION

39. Part 1 of the Bill makes provision for a licensing and regulatory regime for the acquisition, possession, use and disposal of low-powered air weapons in Scotland. These weapons have not previously been subject to licensing in Scotland or the rest of Great Britain. However, the scheme to be introduced follows, to a broad extent, the existing systems for licensing more powerful firearms under the Firearms Acts. That legislation, and responsibility for policy and legislation on the majority of firearms, remains reserved to the UK Parliament. Air weapons in Northern Ireland are licensed as part of the separate firearms regime in that country.

40. Given that the provisions in this Part of the Bill are broadly based on existing legislation and systems, it is important to emphasise that much of the infrastructure, knowledge and experience required to set up and administer air weapons licensing is already in place. This is true not only of Police Scotland, but amongst established shooting organisations and members of the legitimate shooting community. This part of the Memorandum is largely concerned with setting out estimates of the new or additional costs which will fall to agencies or individuals as a result of the licensing regime.

Where the costs will fall

41. The licensing authority for air weapons, as for the majority of firearms and shotguns, will be the chief constable of Police Scotland. Day-to-day responsibility for managing and administering the service is delegated to firearms licensing officers and staff across Scotland. As such, the majority of the costs involved in setting up and maintaining the licensing service will fall to Police Scotland.

42. Certain central costs will fall to the Scottish Administration. It is anticipated that these will fall into two broad areas: firstly, providing funding to help to meet initial set up costs; and secondly, to promote information and education, both in Scotland and further afield, on the new licensing requirement for air weapons. In addition, there will be costs to the Crown Office and Procurator Fiscal Service, Scottish Court Service, Scottish Prison Service and other agencies, arising from the enforcement of the new provisions. Costs at a lower level will also fall on a number of other government departments and agencies, other stakeholders and businesses including registered firearms dealers.

43. The Bill also provides powers for a tariff of fees to be charged at the point at which a person applies for an air weapons certificate (AWC) or, in certain cases, for a permit or other approval. Fees will be collected by Police Scotland and will help to offset the costs of providing the service. The fees will be payable by the individual applying for a certificate or, as appropriate, by air weapons clubs or other corporate bodies. Unlike other firearms applications, the fee will be charged whether the application is successful or not. The broad structure of the fee tariff will follow that in place for other firearms and shotguns. The actual fee amounts payable in each case will be set out in secondary legislation.

Consultation and source of figures

44. In November 2011 the Cabinet Secretary for Justice convened the Scottish Firearms Consultative Panel (SFCP) to discuss and advise on developing the new regime. Following the work of the Panel, the Government undertook a public consultation exercise on the principles of the proposed licensing regime between December 2012 and March 2013.

45. The Government has discussed the costs which may arise as a consequence of the licensing scheme with key stakeholders to prepare this Memorandum. The estimates of the numbers of weapons and owners, the value of weapons and business transactions, and the costs of the new system used throughout this part of the Memorandum are therefore based on estimates made by the Scottish Government, informed by discussions with stakeholder individuals and organisations. In particular, the Scottish Government has developed these estimates in discussion with representatives of Police Scotland and the Scottish Police Authority, the Crown Office and Procurator Fiscal Service (COPFS), the Gun Trade Association / Airgun

Manufacturers and Traders Association, and other members of the SFCP. The figures provided below do not, however, represent the views of those organisations, which may wish to comment separately.

General assumptions made

Number of air weapons currently held in Scotland

46. Given that air weapons have not previously been subject to licensing in Scotland it has been difficult to make an accurate assessment of the number of air weapons currently held.

47. The issue of the number of weapons was raised again during meetings of the SFCP during 2011 and 2012. It was agreed by the Panel that there was no definitive count of air weapons held, nor any way of assessing that number completely accurately. However, work done by the member from the Gun Trade Association on behalf of the Panel examined sales figures for air guns over a 20-year period to 2011. This confirmed a sales pattern which was broadly consistent with an overall estimate of some 500,000 weapons in circulation.

48. A number of stakeholders who are opposed to the principle of licensing have argued that a much higher figure, perhaps as many as 700,000 air weapons, would be a more appropriate estimate. The Scottish Government has not, however, seen or been provided with any objective evidence to support a significantly higher figure than the 500,000 weapons discussed by the SFCP.

49. Given these discussions the Scottish Government has adopted the figure of 500,000 air weapons as the core estimate for the purposes of this memorandum and other calculations.

Estimated number of certificate applications

50. Taking a base estimate of 500,000 air weapons in Scotland it is accepted by all parties to the discussions and consultation that there will, in fact, be a much lower level of applications for AWCs. There are a number of reasons for this including:

- A significant number of air weapons are likely to be inoperative or broken, or may have been disposed of by the owners already.
- A large number are likely to be held unused. This may be because a person no longer shoots, because the weapon has been inherited and held as a family item, or simply because they have been put aside at some stage in the past and left unwanted or, in many cases, forgotten.
- A significant number of people in possession of an air weapon are likely to possess more than one. This may arise as a result of shooting over a long period and purchasing newer or better guns over time, owning a variety of weapons for different purposes, or because air weapons are used by more than one member of the household. An AWC will be valid for any number of air weapons held by the certificate holder.
- As of December 2012 there were some 60,000 holders of firearm or shotgun certificates in Scotland, who possess approximately 213,000 weapons. Many of these existing certificate holders will also hold and wish to retain air weapons. The Bill includes, as a transitional measure, provision for those people to continue to possess and use those air weapons, subject to conditions, until such time as their existing certificate expires. At

that stage it will be open to them to seek to obtain co-terminous certificates for all of the guns they possess.

51. Alongside all of these factors, the Scottish Government accepts that there will be a number of air weapons in circulation which do not, at least in the short term, come to the attention of the licensing regime. This will occur for a number of reasons. For example, a number of people may not be aware of the new legislation from the outset. In addition, it is possible that a number of people will seek to avoid or ignore the new requirements. Such a decision would represent an offence in terms of the legislation and the Bill empowers the police to seize any unlicensed weapons discovered and charge the person with the relevant offence(s).

52. Given the above, it is impossible to provide any firm number of applications which are likely to be received by Police Scotland. In discussions around the SFCP and elsewhere with stakeholders, estimates range from a very small number of “new” applications (i.e. from individuals without an existing firearm or shotgun certificate) to around 75% of air weapon owners.

53. The Scottish Government believes that the figures above are likely to be at the extremes of the range of actual applications, and that it is appropriate to set out the main estimates of costs based on a range of potential new applications – that is, applications from those who hold only air weapons and are currently unknown to police firearms licensing departments. Following discussions with Police Scotland and others the Scottish Government considers that a range of 10,000, 20,000 and 30,000 new applications provides a suitable estimate of such applications in the first licensing round. The costs and fee income figures below are calculated on this basis.

54. As noted above, it is accepted that there is likely to be a large number of existing firearm and/or shotgun certificate holders who wish to obtain an AWC. The Government estimates that this could be in the region of 40,000 existing certificate holders. Furthermore, as serious competitive or professional shooters, many of these individuals are likely to own several air weapons meaning that they will account for a considerable portion of the estimated 500,000 air weapons in circulation. The costs of processing applications from existing certificate holders will, however, be relatively small as the necessary background checks on such applicants will already have been carried out. It is envisaged that a lower fee for such applications should be sufficient to cover such costs, making the processing of these applications cost-neutral.

COSTS ON THE SCOTTISH ADMINISTRATION

Scottish Government

55. Air weapons licensing will be administered by Police Scotland alongside the existing licensing systems for more powerful firearms and shotguns. However, it is anticipated that some costs will be borne centrally by the Scottish Administration.

Guidance

56. The Scottish Government is mindful of the need to support the legislation with detailed guidance for the police, for registered firearms dealers and others affected by the changes and for owners and users of air weapons. That guidance will follow the terms of the legislation and the aim is to draw on the existing, recently reviewed Home Office Guide on Firearms Licensing

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

Law, which was published in full in November 2013, as well as consolidated guidance for police and shooters in Scotland currently being prepared by Police Scotland, and on existing material produced by the shooting organisations. All of the main shooting organisations, and other stakeholders, have expressed their willingness to work with the Government to ensure as many people as possible are aware of the new requirements.

57. The preparation of the guidance will be a matter for the Scottish Government as part of the normal business of the Safer Communities Directorate.

Public information

58. The Scottish Government has given a firm commitment, throughout the discussions and consultation on the air weapons provisions of the Bill, to ensuring that as many people as possible are aware of the new licensing requirements. It is anticipated that there will be a substantial lead-in period to full commencement of Part 1 of the Bill, to allow people to take decisions on whether they intend to apply for an AWC or dispose of weapons they hold. As part of this, the Government will undertake a high-profile media campaign to explain the new legislation. This will draw on the experience of the highly successful 2009 campaign to raise awareness of the danger of air weapons and is likely to use printed materials, the internet and possibly local radio to ensure the information reaches a wide audience. As noted above, all of the main shooting organisations have committed to working with the Government to ensure as many people as possible are aware of the new requirements.

59. The Government has estimated that the initial costs of such a campaign would be in the region of £225,000, spread over two years. Ongoing costs would be met from within existing resources.

Costs	Year 0 (2015-16)	Year 1 (2016-17)	Year 2 (2017-18)	Year 3 (2018-19)	Year 4 (2019-20)	Year 5 (2020-21)
Media Campaign	£150,000	£75,000				

Police Service of Scotland and Scottish Police Authority

60. The cost estimates set out below are, as far as possible, expressed in terms of the cost per certificate application process. The figures are drawn from three main sources:

- Knowledge of the costs of operating the existing firearms licensing service. These costs were provided by the former Scottish police forces, prior to April 2013, as part of the discussions at the SFCP and from additional, more recent material from Police Scotland;
- Figures provided by Police Scotland in an internal briefing paper dated September 2013, and shared to inform discussions with the Scottish Government; and
- Figures under discussion between the Association of Chief Police Officers (ACPO) Firearms and Explosives Licensing Working Group (FELWG) and the Home Office, in the context of revising the existing fee tariff. A Home Office working group, which includes a representative from Police Scotland, is currently examining this issue in detail. While no firm decisions are expected for some time, both Police Scotland and the Scottish Government have been kept informed of progress and of the assumptions used.

Set up costs

61. Police Scotland’s Licensing and Violence Reduction Division is well established and includes trained, experienced officers and police staff who operate the existing firearms licensing function. The new air weapons regime will build on this function and should be capable of being introduced without significant disruption. There are, however, likely to be some set up costs associated with introducing the new regime. The Scottish Government’s best estimates of these costs are set out below.

62. Staffing - The current licensing service employs some 66 administrative staff and 25 police officers, in order to service the 60,000 certificate holders. The Government proposes that the new system will not be unduly burdensome in terms of the application process, background checks on the applicant, home visits, etc. (see below). In addition, the provisions include transitional measures which will allow an existing certificate holder to “delay” application for an AWC until their existing certificate expires. Given this, the Scottish Government does not believe that there will be a need for significant additional staffing to process new applications. It is acknowledged, however, that staffing may be subject to the normal peaks and troughs of the certification cycle, and that there is likely to be a particular impact in the first 12 to 24 months of the licensing process. The calculations on application processing costs set out below reflect the anticipated staff time involved in each of the main processes, and therefore translate to staffing impacts.

63. Training – As noted above, Police Scotland already operates a full licensing service. The air weapons regime is based on the current firearms regime and will use the same or familiar forms, processes and considerations. The additional training of staff for the new legislation is therefore expected to be relatively low impact and will, over time, be built into the current training programme. Following discussions with Police Scotland, it is anticipated that it will be possible to absorb any additional training requirement within existing resources.

64. ICT – Police Scotland uses the SHOGUN IT system for processing and recording firearms and shotgun applications, certificates and other information. The system was used by several of the legacy forces prior to April 2013 and is expected to be fully rolled out across Scotland by the second half of 2014, under a five-year maintenance and development contract. Discussions with Police Scotland indicate that it will be possible to build onto the existing systems to include air weapons certification within SHOGUN and Police Scotland have confirmed this in principle with the software contractor. This allows for familiarity in the processing function, and ensures that all certification and related systems – such as the Criminal History System – will operate smoothly together. At this stage, no formal discussions have taken place with the company responsible for SHOGUN and it is not possible to state likely development costs with any certainty. However, initial discussions indicate that the costs of software development built on existing systems and any additional hardware capacity should not be high. An allowance of up to £50,000 has been made at this stage.

65. A summary of anticipated set up costs is therefore:

Costs	Year 0 (2015-16)	Year 1 (2016-17)	Year 2 (2017-18)	Year 3 (2018-19)	Year 4 (2019-20)	Year 5 (2020-21)
ICT costs	£50,000					

Processing costs

66. The main costs falling to Police Scotland will arise from the initial certification of air weapons holders, and ongoing checks and renewals of certificates once the main regime is in place. To a great extent all of the main elements of the regime are already in place, so that the impact of any new work and costs will be reduced as far as possible. In addition, it is not the intention to repeat or duplicate background and other checks unnecessarily where a firearms or shotgun certificate is already held. More generally, it is expected – and has been agreed with Police Scotland - that extensive, detailed background checks and home visits will be necessary only in a very small proportion of cases. This is reflected in the calculation of costs below.

67. Work done by ACPO in 2012, to inform fee discussions with the Home Office, suggested that processing of the grant of a firearms or shotgun certificate could involve more than five hours of a police enquiry officer’s time, with almost two further hours of administrative officer time for each process, on average. This level of resource would lead to a total cost of some £196 per certificate granted. Timings and charges at this level were not agreed by the shooting lobby or by the Home Office at the time. Further work has been done since, and is continuing, to reassess these workloads, and to estimate processes and timings involved in a system which could operate through an online regime, and which draws out greater efficiencies in the service overall.

68. For the purposes of the air weapons regime, the Scottish Government believes that an appropriate level of checking and processing could be achieved at significantly lower costs than the figures set out above. Experience of “disclosure” style background checks under other legislation – for example, when dealing with the protection of vulnerable groups – has shown this to be both achievable and successful. In discussion, Police Scotland agrees that this level of check would be appropriate for air weapons in the vast majority of cases. Relatively few air weapons applications would require a significantly higher level of background check and inquiry, perhaps including a home visit for the purposes of checking location, security, etc..

69. Drawing all of these considerations together, and taking into account latest (March 2014) ACPO/Home Office discussions around processing times for online applications, the Scottish Government believes that the tables below represent a reasonable estimate of the costs of processing new air weapons applications. The unit staff costs used are those set out in a Police Scotland briefing paper dated 11 December 2013 and are derived from unit costs currently being used to inform the wider examination of firearms fees by the Home Office.

Staff type	Average salary per annum 2013	On costs	Indirect overheads	Total cost per annum for 2013	Hourly
Enquiry officer	£27,000	£5,670	£9,801	£42, 471	£28.30
Administrative officer	£19,300	£4,053	£7,006	£30,359	£20.10

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Process	Enquiry Officer Hrs	Admin officer Hrs	Enquiry Officer @£28.30 / Hr	Admin Officer @£20.10 / Hr	Background checks	Mileage (visit)	Total £
98% (Standard process)	0.00	1.20	£0.00	£24.15	£60.00		£84.15
2% (Detailed process incl home visit)	1.75	1.20	£49.50	£24.15	£60.00	£20.00	£153.65
Average						Approx.	£85.55

70. This results in total estimated processing costs of new applications (i.e. from individuals without an existing firearm or shotgun certificate):

- 10,000 applications - £855,500
- 20,000 applications - £1,711,000
- 30,000 applications - £2,566,500

71. These costs would be spread across the normal five-year licensing period but it is intended that air weapons holders will be able to apply for their first licence in advance of full commencement. Transitional arrangements also mean that existing firearm or shotgun certificate holders do not have to apply for a new AWC until their existing certificate is being renewed. For the purposes of this memorandum it is anticipated that commencement of the main provisions of Part 1 would come into effect on 1 April 2016. Given this, the estimated profile of application costs is set out in the following table:

No. of applications	Year 0 (2015-16) 20%	Year 1 (2016-17) 30%	Year 2 (2017-18) 20%	Year 3 (2018-19) 10%	Year 4 (2019-20) 10%	Year 5 (2020-21) 10%
10,000	£171,100	£256,650	£171,100	£85,550	£85,550	£85,550
20,000	£342,200	£513,300	£342,200	£171,100	£171,100	£171,100
30,000	£513,300	£769,950	£513,300	£256,650	£256,650	£256,650

72. In addition to the above, there will be a significant number of existing holders seeking co-terminous certificates. The costs of processing such certificates will be greatly reduced, as much of the required information and checking will already have been done for the firearms or shotgun process. The Scottish Government estimates that the additional costs involved would amount to some £10 per certificate. It is assumed, for the purposes of this memorandum, that there would be some 40,000 such applications over the period. This would amount to some £400,000 over the five-year licensing period, averaged out to £80,000 per year. However, it is anticipated that these costs could be fully recovered by way of a fee charged for the co-terminous procedure. The net financial impact on Police Scotland is therefore nil.

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

Other processes

73. The above estimates relate to the initial five-year period when almost all applications will be for new AWCs. For Year 6 onwards, many of the certificate applications will relate to renewals of existing authorities and processing costs should generally be lower as much of the data would already exist and Police Scotland would have knowledge and experience of the applicant at that stage. While this memorandum does not detail estimates beyond the first five-year cycle, the relevant costs for processing a renewal application could be estimated at:

	Enquiry Officer Hrs	Admin officer Hrs	Enquiry Officer @ £28.30 / Hr	Admin officer@£20.10/Hr	Mileage (visit)	Total £
Renewal	0.00	1.00	£0.00	£20.10		£20.10

74. Similar estimates have been made for the other main applications processes set out in Part 1 of the Bill:

	Enquiry Officer Hrs	Admin officer Hrs	Enquiry Officer @£28.30 / Hr	Admin officer @£20.10 / Hr	Mileage (visit)	Total Cost £
Police Permit		0.50		£10.05		£10.05
Visitor Permit	0.00	1.00	£0.00	£20.10		£20.10
Events Permit	1.00	1.00	£28.30	£20.10	£20.00	£68.40
Air Weapons Club approval	2.00	1.75	£56.60	£35.18	£20.00	£111.78

75. As there has been no previous experience of licensing such weapons, or of issuing permits for specific activities, it is not possible to provide any robust estimates of the numbers of applications likely to be received and processed. However, the Scottish Government considers that the fee to be charged for these processes can and should be set at a cost-recovery level, offsetting the costs of each process – see table of potential fees at paragraph 104. Fees set at these levels should not be prohibitive when measured, in the case of visitor permits for example, against the costs of travel to or holidaying in Scotland, or could be recovered by the applicant through entrance or membership fees. The fee tariff will be set in secondary legislation and detailed discussion of the potential fee levels is set out at paragraph 101 below.

Compliance costs

76. In line with the Scottish Government approach to regulating air weapons, the Scottish Government envisages that the majority of existing firearm and shotgun certificate holders will properly apply for a new AWC at the appropriate point in time. For those not already within the firearms licensing systems, it is not the intention that Police Scotland should pursue unlicensed air weapons as a significant new priority. Rather, the regime will allow the police to identify and regulate legitimate air weapons holders, and to identify and seize unlicensed weapons as part of

their wider responsibility for policing. Detection and enforcement of the new provisions will, therefore, form part of existing operations in the majority of cases. In line with this approach, no additional police officers should be required as a consequence of the new legislation.

77. Police Scotland and the Head of Firearms at the Scottish Police Authority have sought to estimate the costs involved in recording and reporting cases where an air weapon is retrieved by officers in the course of their investigation, and the costs of testing any such weapon to assess its specification, power, etc.. The Scottish Government accepts their stated estimate that each case would involve an average of around two hours of work, costing some £180 per case, if a full court report is required. The Government also noted that the development and use of a simpler, standardised reporting format could reduce this unit cost to as low as £100.

78. As above, it is difficult to make any firm estimate of how many air weapons would fall to be tested as a result of the new legislation. However, taking account of the 171 offences involving air weapons recorded in 2012-13 and allowing for new cases and seizures arising from the new provisions Police Scotland considers that some 500 new tests could be needed each year – broadly 10 cases a week.

79. The estimated maximum additional enforcement, testing and reporting costs are therefore:

500 cases @ £180 per case = £90,000 per annum.

Hand-ins and disposals

80. One of the effects of the introduction of the new legislation will be to encourage people to consider whether they wish to license weapons held, or to dispose of them. Many such disposals could be through sales, etc., but it is anticipated that many old or unwanted air weapons could be handed in to the police for disposal and destruction. Police Scotland would collect such weapons and make arrangements, either locally or nationally to have them held securely then destroyed. This would build on existing arrangements for the handling of firearms generally.

81. As with other aspects of the proposals, it is not possible to estimate accurately how many such air weapons could be involved, nor what the disposal arrangements are likely to cost in total. The Scottish Government notes, however, that a long lead-in period is anticipated before the licensing provisions are fully commenced, and that Police Scotland already has in place arrangements to dispose of firearms. Such arrangements include “no cost” agreements with companies to securely destroy the weapons with the private company benefitting from any scrap value resulting. At this stage, the Government’s best estimate of the additional hand-in and disposal costs arising from the Bill provisions is some £30,000 spread over the initial years of the licensing regime. Thereafter, it is believed that the costs of ongoing disposals, forfeitures, etc. would be absorbed within existing resources.

82. A summary of the additional ongoing costs anticipated is:

Costs	Year 0 (2015-16)	Year 1 (2016-17)	Year 2 (2017-18)	Year 3 (2018-19)	Year 4 (2019-20)	Year 5 (2020-21)
Weapons testing		£90,000	£90,000	£90,000	£90,000	£90,000

Hand-ins & disposals	£20,000	£10,000				
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Scottish Court Service / Scottish Prison Service

83. As noted above, it is not the intention that Police Scotland should pursue unlicensed air weapons as a significant new priority. Prosecutions for licensing offences are therefore likely, in the majority of cases, to be pursued in parallel with other offences, whether these relate to offences of assault, vandalism, threatening behaviour, animal cruelty etc.. There were some 171 offences involving air weapons in the year 2012-13 and the additional costs of reporting and pursuing any associated licensing offence in such cases would, for the most part, represent a marginal addition to the policing and prosecution costs involved. This memorandum is therefore mainly concerned with estimating the number and costs of new, stand-alone licensing offences under Part 1 of the Bill, as unlicensed air weapons are identified and seized in the course of other investigations and police operations.

New cases

84. Given this background, the Scottish Government anticipates that the new measures will lead to a very small additional number of the most serious licensing offences, for example in relation to repeat offenders, being prosecuted in the sheriff courts under solemn procedure, with the expectation that a custodial sentence and/or substantial fine would be imposed on conviction. It is difficult to predict exact levels of activity at this stage, but the Scottish Government estimates that between two and five additional cases would be tried each year in solemn proceedings in the sheriff court.

85. There will also be a higher number of less serious cases, for example failure to comply with conditions on an AWC. In addition, Police Scotland has stated that it currently encounters a large number of low-value air weapons in the course of its operations which it would be likely to seize once the new legislation comes into force. Such cases would most probably be dealt with by way of summary procedures. The Scottish Government considers that a realistic estimate of new summary prosecutions under the licensing provisions of the Bill would, in the early years of the regime, lie between 50 and 100 additional cases detected per annum. Given that the majority of such cases would relate to licensing offences, it is estimated that a very small proportion would result in custodial sentences, perhaps as low as 2%, with an assumed sentence length of six months (with three months served).

Costs arising

86. Estimates have been made about the “unit costs” associated with pursuing prosecutions through both the solemn and summary court procedures. These estimates are based on assumed average costs in each case and have been calculated by the Scottish Government in consultation with stakeholders. Similarly, assumptions about potential disposals, whether custodial or by fine have been estimated, based on existing experience of court disposals.

87. In summary, the assumptions made in the relevant sections below are:

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	Solemn cases	Summary cases
Costs		
Legal Aid costs per case (Source: Scottish Legal Aid Board Annual Report 2012-2013)	£1,900	£660
Prosecution costs per case (Estimate)	£8,000	£400
Court costs per case (Estimate)	£1,850	£335
Annual cost per prison place (Source: Scottish Prison Service Annual Report and Accounts 2012-13)	£42,620	£42,620
Disposals		
% custodial	50%	2%
Sentence length	One year	six months
Actual time served	six months	three months
% fine/other disposal	50%	98%

88. Using the assumptions above, a summary of the projected costs is shown below. Costs have been assumed at the mid-point of estimates for the purposes of this Memorandum.

Solemn		Range		Selected
		2	5	3
	cost per case			
Legal Aid	£1,900	£3,800	£9,500	£5,700
Prosecution	£8,000	£16,000	£40,000	£24,000
Court costs	£1,850	£3,700	£9,250	£5,550
		£23,500	£58,750	£35,250
Prisons		2	5	3
% custodial	50%	1	2.5	1.5
Sentence length	One year			
Actual time served	six months	0.5	1.25	0.75
Annual cost of prison places	£42,620	£21,310	£53,275	£31,965

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Summary		Range		Selected
		50	100	75
	cost per case			
Legal Aid	£660	£33,000	£66,000	£49,500
Prosecution	£400	£20,000	£40,000	£30,000
Court costs	£335	£16,750	£33,500	£25,125
		£69,750	£139,500	£104,625
Prisons		50	100	75
% custodial	2%	1	2	1.5
Sentence length	six months			
Actual time served	three months	0.25	0.5	0.375
Annual cost of prison places	£42,620	£10,655	£21,310	£15,985

Summary of selected costs	Legal, prosecution and court costs	Scottish Prison Service	Total
Solemn (3pa)	£35,250	£31,965	£67,215
Summary (75pa)	£104,625	£15,985	£120,610
	£139,875	£47,950	£187,825

89. In each case, the estimated number of new cases arising directly from the provisions of Part 1 of the Bill, and the costs associated with such cases, do not translate to any significant new burden on the courts or prison services. The Scottish Court Service Annual Report 2011-12 showed that there were some 1,128 solemn trials and 6,846 summary trials where evidence was led. In addition, the average daily prison population in Scotland in 2012-13 was 8,014. The likely impacts of air weapons licensing, therefore, represent a very small percentage of the total costs of these organisations and should be accommodated within existing workloads and likely fluctuations therein. The relevant costs have, therefore, been classed as opportunity costs.

COSTS ON LOCAL AUTHORITIES

90. The licensing authority for air weapons in Scotland will be Police Scotland. The Scottish Government does not propose any formal role for local authorities within the new regime. This is in line with the present firearms and shotgun licensing arrangements. As a result, the Scottish Government does not anticipate any new costs falling on local authorities as a result of Part 1 of the Bill.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Registered firearms dealers

91. The Gun Trade Association Ltd (GTA) is the UK's officially recognised body representing the legitimate sporting, recreational and professional gun trade. It has over 700 members and its mission is to promote and protect the industry at all levels. The GTA (and the Airgun Manufacturers & Trade Association Ltd (AMTA)) were represented on the Scottish Government's SFCP and provided or confirmed a number of the main figures and assumptions used in developing this memorandum.

92. Scottish Government statistics showed that there were 353 registered firearms dealers (RFDs) in Scotland at December 2012. Many of these are involved in trading air weapons, with GTA/AMTA servicing around 114 air weapon outlets. Figures provided by the GTA/AMTA in October 2012 (and confirmed in March 2014) estimated that retail sales of air weapons at that time amounted to approximately three guns per week per outlet, with a total estimated retail value of some £2.4 million per annum. An additional £2 - 3 million per year was estimated as being attributable to "related" products and sales, including clothing, targets, scopes, etc..

93. The Scottish Government understands that GTA/AMTA members at the time reported a small downturn in sales in the period 2010 to 2012, against a background of the general economic downturn, as well as unfounded speculation about an "air weapons ban" in Scotland. However, this had to be seen against a longer term trend of a rise in sales over a nine- or ten-year period. This rise has occurred despite the introduction of greater controls over the possession and sale of air weapons in the Anti-social Behaviour Act 2003, the Violent Crime Reduction Act 2006 and the Crime and Security Act 2010.

94. Overall, the Scottish Government accepts that there may be an adverse impact on sales figures as a result of this legislation coming into force. However, this is not expected to be large. The licensing regime is designed to ensure that a reasonable person with a legitimate reason for possessing an air weapon should be able to obtain a certificate and continue to shoot. Gun sales to this customer base will, in many cases, be focused at the higher value end of the market, along with sales of related products. Sales of lower powered weapons are, therefore, likely to reduce as a proportion of all sales and the Government believes that such a reduction is justified in terms of the wider benefits to public safety.

95. In terms of ongoing costs, the new legislation places two main responsibilities on air weapons traders. Firstly, the dealer will be required to ensure that a person buying an air weapon holds a valid AWC. That check should be relatively simple and builds on existing requirements with regard to the conduct and recording of air weapons sales, introduced by the Violent Crime Reduction Act 2006. Secondly, dealers will be required to notify the chief constable of any air weapon sold for delivery outwith Great Britain. Again this builds on existing procedures for firearms and shotguns and will not represent any significant new burden for RFDs.

Shooting clubs

96. There is already a small network of air weapon clubs across Scotland, many of which are affiliated with recognised shooting organisations such as the Scottish Air Rifle and Pistol Association (SARPA), UK Association for Hunter Field Target (UKHAFT), and National Small-

bore Rifle Association (NSRA). Such clubs should have appropriate premises which can be inspected and approved by Police Scotland. The Bill sets a framework for such an approval process and the Scottish Government will supplement this with detailed guidance, following the model of the current Home Office guidance on the approval of rifle clubs and muzzle-loading pistol clubs, which are governed under section 15 of the Firearms (Amendment) Act 1988.

97. A fee will be payable by the club to help meet the costs of this approval process. While such fees will represent a cost to the club and to members, the Scottish Government believes that the overall impact should be very small when viewed against the overall costs of providing suitable premises or a shooting range, and the wider costs involved in air weapon shooting.

Shooting organisations

98. As with air weapons clubs, the Scottish Government does not consider that there will be any significant impact on shooting organisations. It is likely that the majority of existing legitimate and serious air weapons shooters are, and will continue to be, members of or subscribe to one or more of the main organisations. Conversely, those who should not possess weapons or who possess them with the aim of causing mischief are unlikely to be members of shooting organisations.

Tourism

99. The Bill provides for a system of visitor permits for those who wish to visit Scotland with their own air weapons, or to shoot in Scotland, for example on private land or at an organised event. This will draw on the well-established system of visitor permits for firearms and shotguns under the current firearms legislation. The applicant for such a permit will be required to pay a fee at the point of application. The exact level of fees has not yet been set: the current fee for a firearms visitor permit is set at £12, whereas the estimates of processing costs set out above suggest that a fee of around £20 may better reflect the actual costs of dealing with an application. In any event, a fee set at or close to this level would represent a small addition to the costs of a visit to Scotland, particularly where that visit includes significant travel and accommodation costs. The Scottish Government considers that such additional costs are not material and would be unlikely to lead to any significant impact on tourism in Scotland.

Recreational shooting

100. The Bill also provides for event permits, to allow the applicant to organise and promote specific events at which air weapons shooting is to take place. Such events could, for example, include fairs and other situations where it is possible for those who do not normally shoot in a competitive environment to hire or borrow air weapons; specific shooting competitions; or other events which include recreational shooting. The costs of processing an application for a permit to operate such an event are estimated at paragraph 74 above and may amount to some £60 - £70 per event. Such a cost is likely to be small in comparison to the overall costs of staging and promoting such events and could be recouped by the organisers through entry fees or other remuneration. The Scottish Government considers that any impact on the costs of organising recreational shooting events is, therefore, likely to be marginal.

Fees

101. As noted above, the Bill enables a tariff of fees to be charged at the point at which a person applies for an AWC, a permit or for other approvals. The fee will be payable regardless of whether or not a certificate is granted. Fees will be collected by Police Scotland and will help to offset the costs of providing the service. The fees will be payable by the individual applying for a certificate or, as appropriate, by air weapons clubs or other corporate bodies.

102. The broad structure of the tariff will follow that in place for other firearms and shotguns. Those fees are set by the UK Government under reserved legislation. The actual fee amounts payable in each case will be set out in secondary legislation and are likely to be set at levels which strike a balance between the current tariff for firearms, at least in the initial years of the regime, and the estimated average costs of processing each application. The Scottish Government believes it would be inequitable to set an air weapons fee tariff which is greater than that for other guns. This could also encourage ownership of more powerful weapons. The Scottish Government's aim, however, is to move towards a level of fees set at full cost recovery levels.

103. The following table sets out the current (March 2014) fee levels for firearms and shotguns, and shows indicative fees for the equivalent main air weapons processes. The proposals are set at different levels for the purposes of illustrating potential impacts on overall costs. It is also important to note a number of general points:

- Firstly, the existing tariff charges fees for the grant of the certificate. The Scottish Government proposes that it is more appropriate to require payment of a fee at the point of application, and that the fee is not returnable in the event of a refusal of the application. This better reflects the true costs of running the licensing service, as the processing checks and administration have to be carried out regardless of the final decision made;
- Secondly, there are a number of processes (police permits and events permits) where the Scottish Government intends to set a fee, which have no direct equivalent in the current firearms legislation; and
- Thirdly, much of the current tariff has been in place since 1 January 2001 (fees for clubs and museums have been unchanged since 1988). There has been considerable pressure from a number of stakeholders, in particular the police, calling for fees to be increased in line with inflation and to better represent the costs of providing the licensing service. As noted above, work is currently underway in a Fees Working Group, convened by the Home Office and including representation from Police Scotland, to consider an increase in the firearm and shotgun tariff. This work is not yet complete, and it is unclear as to whether a full cost recovery fee level is likely to be set, either from the point of change or on a phased basis.

104. In the table below, two indicative fee levels have been shown, for estimation purposes. These are:

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

Level 1 – Fee levels set at or close to current firearms/shotgun fee levels, where fees are in place

Level 2 – Indicative fee levels based on the estimates of the full cost of processing each type of air weapons case, as set out above

Fees

Process	Current firearms / shotgun fee	Air weapons fee (Level 1)	Air weapons fee (Level 2)
Grant of certificate	£50	£50	£85
Co-terminous certificate		£10	£10
Renewal of certificate	£40	£40	£20
Police permit		£10	£10
Visitor permit	£12	£15	£20
Event permit		£50	£65
Air weapons club	£84	£85	£110

OVERALL COSTS OF PART 1

105. Drawing together all of the above information and given the assumptions made, the following sets out the Scottish Government’s best estimates at this stage of the potential costs arising from the air weapons provisions as set out in Part 1 of the Bill.

106. As noted at paragraph 53 the Government estimates that the number of new applications for AWCs will fall in the range 10,000, 20, 000 or 30,000 with the mid-range estimate of 20,000 new applications considered the most likely scenario. Applications will be spread in the run up to full commencement and over the first five-year licensing period. Many applications are likely to arise in the first years, but transitional measures and other factors mean that the application rate is likely to be spread over the whole period. The estimated profile is set out in the table at paragraph 71 above. The costs of new applications on this basis are set in the table below. Assumed fee levels are calculated at Level 1 (i.e. existing fee tariff).

Processing Costs to Police Scotland

No. of new applications		Year 0 (2015-16) 20%	Year 1 (2016-17) 30%	Year 2 (2017-18) 20%	Year 3 (2018-19) 10%	Year 4 (2019-20) 10%	Year 5 (2020-21) 10%	Total
10,000	Net cost	£71,100	£106,650	£71,100	£35,550	£35,550	£35,550	£355,500
20,000	Cost	342,200	513,300	342,200	171,100	171,100	171,100	£1,711,000
	Fee income	£200,000	£300,000	£200,000	£100,000	£100,000	£100,000	£1,000,000

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

	Net cost	£142,200	£213,300	£142,200	£71,100	£71,100	£71,100	£711,000
30,000	Net cost	£213,300	£319,950	£213,300	£106,650	£106,650	£106,650	£1,066,500

107. Taking the mid-range estimates shown above the following table seeks to summarise the full costs arising from Part 1 of the Bill. A number of other costs are considered to be “up-front costs” and are shown in the table accordingly. The ongoing costs for other agencies are shown per annum.

Summary of cost estimates

Costs	Para	Year 0 (2015-16)	Year 1 (2016-17)	Year 2 (2017-18)_	Year 3 (2018-19)	Year 4 (2019-20)	Year 5 (2020-21)	Total
Scottish Government (Media)	59	150,000	75,000		0	0	0	£225,000
Police Scotland								
Net processing cost	106	142,200	213,300	142,200	71,100	71,100	71,100	£711,000
PS/SPA - Weapons testing and reporting	82	0	90,000	90,000	90,000	90,000	90,000	£450,000
ICT costs	65	50,000	0	0	0	0	0	£50,000
Hand-in and Disposals	82	20,000	10,000	0	0	0	0	£30,000
COPFS/Courts (Mid-level estimates)								
Solemn (three pa)	88	0	35,250	35,250	35,250	35,250	35,250	£176,250
Summary (75pa)	88	0	104,625	104,625	104,625	104,625	104,625	£523,125
Scottish Prison Service	88	0	£47,950	£47,950	£47,950	£47,950	£47,950	£239,750
Total		362,200	576,125	420,025	348,925	348,925	348,925	£2,405,125

PART 2 - ALCOHOL

INTRODUCTION

108. There are nineteen separate provisions in relation to alcohol licensing in the Bill. The main amendments are listed below it is believed that their overall financial impact is likely to be close to neutral. The more significant financial impacts on stakeholders are described throughout this section of the Financial Memorandum

109. Part 2 of the Bill amends the system of alcohol licensing by:

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place. This fulfils a manifesto commitment;
- 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 Offenders 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 licence holder to notify a change in interested parties and removal 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 failing to undertake refresher training and other changes to the 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. This clarifies compliance with the EU Services Directive.

COSTS ON THE SCOTTISH ADMINISTRATION

Scottish Government

110. Alcohol licensing will continue to be administered locally by local authority Licensing Boards so centrally borne costs will continue to be minimal.

111. The Scottish Government already produces and updates guidance in relation to alcohol licensing. The production of guidance on the alcohol licensing aspects of the Bill, would form part of this existing work and, therefore, be met from within existing budgets. No additional costs to the Scottish Government have been identified in respect of Part 2 of the Bill.

Police Service of Scotland

112. In 2007, the overall estimate for the cost of alcohol-specific offences and alcohol-specific crimes and offences was estimated £727.1 million.⁴

113. Police Scotland is very supportive of these measures in the Bill, which will improve departmental effectiveness with no anticipated impact on policing demands or financial outlay. Police Scotland has stated that the measures may actually save money and prevent it having to manage particular problems in certain premises which is a time-consuming and more expensive option.

114. Under the Bill, police responsibility will remain broadly the same with responsibility for conducting checks on licence holders, enforcement and offering views on complaints. However with the introduction of the 'fit and proper' test and the consideration of spent convictions, the police will have powers to provide a wider range of information to Boards.

115. No additional police costs are anticipated in this regard. The background work is already carried out for every new applicant and/or transferee and in response to incidents occurring which are linked to licensed premises and holders of personal licences. Spent convictions are automatically checked when the police undertake background checks in their role as statutory consultee so there will be no additional burden in this regard.

116. Police Scotland has welcomed the new offence of supplying alcohol to young people/ children for consumption in a public place. It is not clear that policing the offence would be an additional cost to Police Scotland as the police are already committing resource to dealing with the behaviour to which it relates. Police Scotland feels that this offence will prove to be a deterrent and useful preventative measure as well as an additional tool to tackle the source of alcohol to young persons, underage drinking, and associated antisocial behaviour and disorder. Ultimately, these changes should reduce the pressure on police resource caused by this behaviour which has come to blight the evening economies of towns and cities, especially at the weekend.

117. In common with similar offences under the 2005 Act, the Scottish Government anticipates that Police Scotland will use it to encourage compliance, with only a relatively small number of prosecutions being taken where necessary to protect public safety. The actual number

⁴ The Societal Cost of Alcohol Misuse in Scotland. <http://www.scotland.gov.uk/Publications/2009/12/29122804/0>

of prosecutions under this offence would, however, depend on the approach taken by Police Scotland. The estimated cost involved in processing a summary case from the point at which the crime is committed to the point at which a suspect is charged is £439.⁵ A similar offence under section 105 of the 2005 Act was the basis of 50 prosecutions in 2012/13. Together these provide a possible indicative cost to Police Scotland of around £21,950 per annum for this offence although, as noted above, a proportion of this cost is already spent in policing the behaviour to which it relates.

Scottish Court Service / Scottish Prison Service

118. It is anticipated that the majority of disposals for incidents of supplying alcohol to a child or young person in a public place will be through early intervention or by means of fixed penalty notices, and as such it is less likely that there will be a significant impact on procurators fiscal or indeed custody provision.

119. The alcohol licensing regime relies on Licensing Boards, made up by local authority councillors. In the main, any punitive action is taken in relation to the relevant licence. The 2005 Act provides a right of appeal for certain Licensing Board decisions. It is not anticipated that the Bill will make significant changes to the number of appeals that are made.

120. There are, however, also a number of existing offences within the legislation, and this Bill provides an additional offence in relation to the supply of alcohol to a child or young person in a public place. It is not anticipated that this new offence will lead to substantial numbers of additional prosecutions. A person who commits this offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale, imprisonment for a term not exceeding three months or both.

121. The average estimated cost of a summary case is £2,148.⁵ This figure includes not just prosecution costs, but also police costs and court costs involved in a case being taken through Scottish summary courts. Excluding the costs incurred up to the point that the suspect is charged, which will fall largely to the police, the average estimated cost of a summary case is £1,709.

122. As set out above in paragraph 117, in common with similar offences under the 2005 Act, the Scottish Government anticipates that Police Scotland will use it to encourage compliance, with only a relatively small number of prosecutions being taken where necessary to protect public safety. Nevertheless, on the basis of the number of prosecutions under section 105 of the 2005 Act in 2012/13, a possible indicative cost of about £85,450 per annum can be derived.

COSTS ON LOCAL AUTHORITIES

123. The alcohol licensing regime is administered at local authority level by Licensing Boards. The Bill will not change this. Local authorities will continue to bear the costs of administering the licensing process, and they recoup their costs through the licensing fees.

⁵ Audit Scotland “An Overview of Scotland’s Criminal Justice System” (http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf)

124. The Licensing (Scotland) Act 2005 section 136 enables the Scottish Ministers to make provision for the charging of alcohol licensing fees by Licensing Boards in a range of situations such as applying for premises licences/paying annual fees, applying for personal licences, occasional licences, and transfer or variation of licences.

125. Licensing Boards are empowered to set their own fees as long as they do not exceed the maximum limits, where appropriate, outlined in the Licensing (Fees) (Scotland) Regulations 2007 (“the 2007 Regulations”). The fees are intended to reflect the Scottish Government’s intention to make the system self-funding i.e. to cover both direct and indirect costs incurred by Licensing Boards. As stated in the 2007 Regulations, regulation 13:

“a Board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by the Board and the council for the area of that Board, in administering the Act generally during that period.”

126. Most of these fees, such as those charged for occasional licences or variations, are the same for all licensees regardless of the size of their business. Premises applications/annual fees are linked to the business’s rateable value, with a number of exceptions such as members clubs, visitor attractions etc., detailed in the 2007 Regulations.

127. In addition to the payment for premises licence applications, personal licence holder applications etc., it is a mandatory condition of the premises licence that holders pay an annual fee to ensure that the system is sufficiently resourced. Licensing Boards are empowered to set their own annual fees for premises licences, as long as they do not exceed the maximum limits outlined in the 2007 Regulations. Licensing Boards will be put under a statutory duty to report their income and expenditure. This will provide a better understanding of their costs and, if demonstrated to be necessary, the maximum limits within the 2007 Regulations will be amended.

Alcohol licensing fee structure

Category of licence	Application fee	Annual fee
	Maximum	Maximum
Category 1 – not entered on valuation roll, no rateable value, nil rateable value, visitor attractions, clubs, provision of accommodation only	£200	£180
Category 2 – rateable value between £1 and £11,500	£800	£220
Category 3 – rateable value between £11,501 and £35,000	£1,100	£280
Category 4 – rateable value between £35,001 and £70,000	£1,300	£500
Category 5 – rateable value between £70,001 and £140,000	£1,700	£700
Category 6 – rateable value over £140,000	£2,000	£900

	Statutory	
Application to vary premises licence under 31 (1)	£31	n/a
Application to vary premises licence – minor variation	£20	n/a
Occasional licence	£10	n/a
Extended hours licence	£10	n/a
Personal licence	£50	n/a

Review of alcohol licensing fees

128. It is for local Licensing Boards to determine the level of appropriate fees, subject to any prescribed level, and to ensure that the licensing regime is self-funding. The recent Review of Alcohol Licensing Fees carefully considered these issues but determined that there was insufficient information to determine whether Licensing Boards were recovering their costs, or making a surplus/deficit, and therefore it was not possible to make firm recommendations on the level of fees. The review, therefore, recommended that Licensing Boards be put under a statutory duty to report on their income and expenditure. The lack of transparency as to Licensing Board costs has also significantly restricted the possibility of accurate costs being developed for the purpose of this memorandum.

129. To increase transparency, this Bill, therefore, puts a duty on Licensing Boards to provide an annual report of their income and expenditure from the fees regime so it is clear that the fees are being set at appropriate levels to cover the Board's costs.

130. The ultimate fees regime in an area will, therefore, reflect the unique circumstances faced in the local authority, and the impact of many factors such as demography, geography and health of the local economy, it is inevitable that there is variation between the licensing fees charged in different local authorities.

	Scotland
Premises licences in force on 31 March 2013	16,237
Personal Licences in force on 31 March 2013	52,794
Number (full-time equivalent) of licensing standards officers employed	61.6

Licensing objectives and statements of licensing policy

131. The Bill amends the licensing objective 'protecting children from harm' to 'protecting children and young people from harm'. There will be administration costs associated with updating written materials, websites, training materials etc. The bulk of these materials is online and subject to periodic review. The Scottish Government would, therefore, expect such costs to be low.

132. The Licensing (Scotland) Act 2005 requires Licensing Boards to produce and consult on a statement of policy every three years regarding licensing within their areas, as well as creating an overprovision assessment. This process prompts Boards to pro-actively assess what policies

are suitable for their area and provides the licensed trade with a visible record of the Board's planned approach which helps them to plan over a three-year period.

133. Creating robust, evidence-based licensing policy statements and overprovision assessments imposes an administrative cost on Licensing Boards and their consultees such as police and health bodies. The amount of time spent on work related to policy statements varies between Boards, some of which spend hundreds of staff hours on the accompanying processes such as engagement, Board meetings, liaising with Licensing Forums, sending letters etc.

134. The Bill amends the 2005 Act to require these policy statements within 18 months of an ordinary election of councillors from local government areas which takes place under section 5 of the Local Government etc. (Scotland) Act 1994. In practice this will usually mean every five years. Reducing the frequency of licensing policy statements will reduce costs for some local authorities. Some Boards may wish to update their policy statements more regularly and they will be able to do by preparing a supplementary policy statement.

135. Reducing the frequency of reviewing the Licensing Policy Statement from every three years to better align with local government electoral terms will potentially result in a 40% saving from existing costs in relation to reviewing their Licensing Policy Statement for Licensing Boards. It will be for individual Boards to determine whether a five-year review is appropriate, and certain Boards may wish to review their Licensing Policy Statement more frequently. It is, therefore, impossible to arrive at an accurate estimate of savings, but the Scottish Government would expect many Boards to find a five-yearly review more proportionate.

Greater powers for Licensing Boards and the police

136. The Bill provides greater powers for Licensing Boards to consider whether applicants or licence holders are 'fit and proper' persons, as well as allowing them to consider spent convictions.

137. It is difficult to estimate any additional costs for Boards because it largely depends on the manner in which they deploy these powers within the exercise of their existing functions. While it is possible that these greater powers could result in more reviews by Licensing Boards and a more detailed consideration of applications, these functions will form part of the business conducted at the regular Board meetings. It is, therefore, anticipated that any additional cost is likely to be minimal. If their fees are below the maximum levels, Licensing Boards could cover any additional costs by raising their alcohol licensing fees.

138. A more detailed consideration of individual licences and applications will improve the existing licensing regime and improve compliance over the long term.

Relevant offences and foreign offences

139. Under the current regime, Licensing Boards are compelled to review a premises licence if they receive a notice from the chief constable confirming that the premises licence holder or connected person has gained a conviction for a relevant or foreign offence. The current regime also compels Boards to hold a hearing if they receive a notice or become aware that a personal licence holder has gained a conviction for a relevant or foreign offence.

140. Many licensed premises have outlets across the whole of Britain. Under the current legislation, if a premises licence holder or connected person is convicted of an offence, for example, in England, there must be a hearing in every Board area in which the person has a premises. This may be appropriate if the offence is sufficiently severe, but Boards do not currently have the power to make that decision and must hold a hearing for every offence no matter how minor.

141. Hearings are usually dealt with as part of the regular business at Licensing Board meetings held monthly or quarterly.

142. The Bill allows Boards to determine whether a review/ hearing is necessary, and provides them with the power to take no further action. This will provide Boards with some cost and time savings. Anecdotal evidence and consultation responses suggest that a significant number of such hearings currently take place across Scotland, serving little purpose. Removing the automatic requirement for such hearings will lead to ongoing resource savings for Boards.

Duty of Licensing Boards to produce annual financial report

143. The Bill requires each Licensing Board to prepare and publish an annual financial report setting out their income and expenditure from the alcohol licensing fees regime. As set out in paragraphs 128 and 128 above, Licensing Boards are already required to base their fees on cost recovery but there is a lack of clarity as to what these costs are. While in theory publishing these calculations should not require significant additional resource, it is recognised that some changes may need to be made to some Boards' financial and accounting practices to enable this. It is anticipated that any additional costs arising from this should be minimal. The annual financial reports will inform the Scottish Government on appropriate maximum fee levels.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Trade

144. The 2005 Act only came into force in September 2009 and the regime is still settling in. It is the Scottish Government's view that in the main it is working well. Therefore, rather than proposing any radical overhauls of the regime, the Bill is intended to improve the existing system and reduce burdens on trade.

145. As explained in paragraphs 139 to 142 above, when a Licensing Board receives notice or becomes aware of the existence of a conviction for a relevant or foreign offence in relation to a premises licence holder or a connected person, they must hold a hearing. For businesses who operate in multiple local authorities, this means that for a relatively minor conviction, they may have to attend many different Licensing Board reviews as there is at least one Board in every local authority. Some businesses may be represented by legal agents at these hearings with associated costs.

146. This is considered to be a disproportionate burden on businesses, so the Bill amends the 2005 Act to allow individual Boards to determine whether a review is necessary. This will save money and time for those businesses which may be affected by this, but the extent of this saving

to each of these will depend, amongst other things, on the number of local authority areas the business operates in. Cost savings by the Board should result in lower alcohol licensing fees.

147. The 2005 Act provides that if a personal licence holder does not meet the deadline for providing evidence to the relevant Licensing Board that the holder has undergone the refresher training, the holder's personal licence must be revoked. Once revoked, a person cannot apply for another personal licence for five years. The consequences of the revocation of a personal licence could include the sale of alcohol no longer being permitted in the holder's premises, unless appropriate steps are taken to name an alternative personal licence holder as the designated premises manager. In addition, personal licence holders who have their licences revoked will no longer be allowed to authorise sales of alcohol or conduct the mandatory staff training and will be unable to obtain another personal licence for a period of five years.

148. The cost for some businesses and individuals could be disproportionate. The Bill amends the legislation so that if a personal licence is revoked for failure to meet this deadline under s87(3) of the 2005 Act, the person can apply for another licence again immediately. As the circumstances which this provision seeks to address have not yet arisen, it is difficult to quantify possible savings to businesses and individuals. However, substantial business disruption will be avoided, and individuals who might otherwise have had to leave their employment will be able to sit refresher training and remain in the sector.

PART 3 – CIVIC LICENSING

TAXIS AND PRIVATE HIRE CARS

149. There are three provisions in relation to taxi and private hire car licensing. The provisions in the Bill are part of a larger body of work which aims to create greater consistency as well as widening and tightening the licensing regime. Specific provisions include:

- The power to refuse to grant private hire car licences on grounds of overprovision;
- The extension of taxi driver testing to include private hire car drivers;
- Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

150. The anticipated financial impacts on stakeholders are detailed below. As general background, according to the most recently published figures⁶, there are 10,603 taxis and 10,208 private hire cars licensed in Scotland. There are also 24,600 licensed taxi drivers and 11,349 licensed private hire car drivers. Figures are not collected for booking office licences. However, according to an informal request for snapshot figures (completed by 23 out of 32 local authorities), there were 224 booking offices licensed in the period October/November 2013.

⁶ <http://www.transportscotland.gov.uk/strategy-and-research/publications-and-consultations/j285663-04.htm>

REFUSAL TO GRANT PRIVATE HIRE CAR LICENCES ON GROUNDS OF OVERPROVISION

Costs on the Scottish Administration

Scottish Government

151. There will be a nil to minimal additional cost in terms of providing guidance on this provision to local licensing authorities. The Scottish Government already publishes guidance and a more general update of this will be due once the Bill is law.

Costs on local authorities

152. This provision is discretionary and will not result in any automatic costs to local authorities. However, if a local licensing authority introduced an ‘overprovision’ policy in relation to private hire car services, there will be associated costs. As there is no previous experience of this specific power, the Scottish Government has based some costs on an equivalent power available to local licensing authorities to limit numbers of taxi vehicle licences. This power allows a taxi vehicle licence to be refused on the basis that there is no significant demand for taxi services that is unmet. Based on recent research, cited above, approximately 44% of local licensing authorities who responded currently limit taxi vehicle licence numbers. Indicative costs for the provision in relation to private hire car services will include the costs described in paragraphs 153-155 below.

Costs to assess the current provision of private hire car services

153. The legislation does not prescribe a method to assess provision and establish overprovision. The method used for assessing ‘unmet demand’ has largely been settled by practice over the years. Local licensing authorities can contract out these assessments and a figure of £15,000 to £20,000 has been quoted for the cost by the Transport Research Institute at Napier University, Edinburgh. However, authorities can also conduct an assessment using internal resources. There is also no legislative basis for the frequency with which such assessments should take place, but guidance from the Scottish Government in relation to taxis states that ‘licensing authorities should carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court’. This follows various cases where a licensing authority has been challenged on the accuracy of its assessment in relation to the application being currently considered. A policy of restriction cannot be inflexible and each application should be assessed on its own merits and in reference to the current context. It is difficult, therefore, to establish exactly how often a licensing authority should conduct an assessment but may be approximately every three years. If a licensing authority chose to carry out an assessment of private hire car services, then the costs would be in the region of £15,000 to £20,000 every three years. These costs would be recovered through licence fees. It would be reasonable to assume that the bulk of licensing authorities will not choose to carry out such an assessment, only carrying one out where they perceive problems arising from the overprovision of private hire car services.

Developing a policy on overprovision

154. Licensing authorities will develop a policy in relation to overprovision which will require input from officials as well as time of elected members considering and agreeing to the policy. There will likely be a need to conduct a public consultation on any proposed policy. The cost of

a public consultation could vary significantly depending on the detail it covers and the methodology used. As an indicative figure, a recent Scottish Government policy consultation on a civic licensing regime cost in the region of £10,000.

Defending refusals

155. It is currently the case that where a licensing authority refuses a licence application, this can be challenged by the applicant in court. The cost of defending such a case varies depending on the facts of the case. While the Bill will provide licensing authorities with an additional ground for possibly refusing applications and this may in turn result in more appeals, it is not anticipated that this will be a significant number.

156. Scottish Government would expect any costs on local authorities to be met by the fees recovered from licence holders. Section 12 of the 1982 Act empowers local licensing authorities to charge fees that are sufficient to meet their expenses in carrying out their functions in relation to taxi and private hire car licensing under the 1982 Act. The overall cost impact for local authorities as a result of this proposal should, therefore, be neutral.

157. There would also be potential savings for local licensing authorities in being able to better manage the trade and a reduction in complaints related to issues with an overprovision of private hire car services.

Costs on other bodies, individuals and businesses

158. There will be potential costs on licence holders (both individuals and businesses) if fees are increased as a result of the increased costs on local authorities detailed above. As the new provision will only be applied to new applications, an existing licence holder could not lose a licence on renewal as a result of this provision. However, new licence applicants will lose any money spent on the application if it is refused and they may face additional costs if they chose to challenge this refusal. Costs would include any legal advice obtained and representation if appearing at court.

159. It is assumed that if a licensing authority introduces an overprovision policy, it has recognised that the current market for private hire car services in its area is not functioning effectively. Evidence of over-supply might include private hire cars attempting to work illegally either out of area or by picking up passengers without a pre-booking. In such situations it is likely that a viable, legal livelihood may be difficult to achieve for all private hire service providers and, therefore, a refusal would be in the interests of the applicant as well as others already providing the service. The quality of service for the consumer may also suffer as a result of overprovision. The potential for an increase in illegal activity alongside a drop in quality both have clear public safety risks attached. The Scottish Government believes that, although this measure might restrict new entrants to the private hire car trade, it would ensure that those within the trade can operate a viable business while complying with laid down requirements.

TESTING OF PRIVATE HIRE CAR DRIVERS

Costs on the Scottish Administration

Scottish Government

160. The production of guidance on testing of private hire car drivers would form part of the Scottish Government's existing work and would, therefore, be met from within existing budgets.

Costs on local authorities

161. This provision is discretionary and there are, therefore, no automatic costs to local authorities. If a local licensing authority decides to introduce testing of private hire car drivers, there could be costs associated with:

- Developing a policy on the testing of private hire car drivers;
- Developing or adapting an appropriate test and any associated training materials;
- Administering tests and associated training.

162. The extent of these costs would depend entirely on the design and detail of testing regime but the licensing authority would be able to recover them from fee income. Section 12 of the 1982 Act empowers local licensing authorities to charge fees that are sufficient to meet their expenses in carrying out their functions in relation to taxi and private hire car licensing under the 1982 Act. Any overall increase in costs for local authorities as a result of this proposal, therefore, should be capable of being recouped through fees.

163. If a local licensing authority decides to require testing of private hire car drivers, the Scottish Government would assume this is as a result of a concern at the level of skills and knowledge of the trade. The costs will, therefore, be offset by an improvement in the service provided to customers and an increase in the professionalism of the trade. Introducing a requirement for testing of private hire car drivers may also be introduced as a first step to tackle concerns with an overprovision of vehicles, prior to the use of the power to limit discussed above. This could therefore save the local licensing authority from the costs associated with that provision. There will also be potential cost savings from a reduction in complaints against the trade that need to be addressed by the local licensing authority. The Scottish Government would only expect a local licensing authority to introduce testing of private hire car drivers where they believed that there was a need or that it would make a positive impact on the trade. It would be possible for licensing authorities to draw upon existing training for taxi drivers, or work jointly with other licensing authorities to reduce the costs of developing new materials.

Costs on other bodies, individuals and businesses

164. There may be a cost attached to taking a test, particularly if an applicant needs to re-take a test. These will vary between local authorities but may be in the region of £50. Any new requirement for testing may also result in existing licence holders having to take time off from work to take the test.

165. Private hire car drivers are often seen as being less professional than their taxi driver counterparts in some areas due to the lack of a testing requirement. Licence holders who are

required to undergo any testing may benefit from the improvement in perception of their professionalism.

EXEMPTION FROM REQUIREMENTS OF SECTIONS 10 TO 21 OF 1982 ACT

Costs on the Scottish Administration

Scottish Government

166. The costs associated with updating guidance and potentially making regulations in relation to further exemptions forms part of the Scottish Government's existing work and will be met within existing budgets.

Costs on local authorities

167. There will be costs for local licensing authorities in terms of preparation for the licensing of a new set of drivers, vehicles and booking offices and then the processing and ongoing administration of the increased number of licences. The current cost of existing taxi and private hire car licenses, which should represent the costs incurred in administering those licences, give an indication of what these costs might be.

168. Section 12 of the 1982 Act empowers local licensing authorities to charge fees that are sufficient to meet their expenses in carrying out their functions in relation to taxi and private hire car licensing under the 1982 Act. Any overall increase in costs for local authorities as a result of this proposal therefore should be minimal.

Costs on other bodies, individuals and businesses

169. There will be costs for the individuals and businesses who currently work under the contract exemption. As this is an area that is currently unlicensed, there are no figures on numbers of operators in Scotland. The potential range of services affected will be wide – from individual operators, e.g. working as part of a council contract to transport school pupils, to large executive hire firms with a fleet of luxury vehicles offering high-end chauffeur services.

170. The cost of driver, vehicle and booking office licences vary according to the local licensing authority. There may also be additional costs for testing vehicles and testing drivers, as well as various fees for approving signage, substituting vehicles, approving wheelchair accessible vehicles etc. In order to give an indicative value of the cost to driver, vehicle and booking offices, examples of the fees associated with the three levels of licence in five licensing authority areas are outlined below:

Local authority	Driver licence (both taxi and private hire car unless otherwise stated)	Vehicle/operator licence (both taxi and private hire car unless otherwise stated)	Booking office licence
Aberdeen	Grant (one year) £50	Grant (one year) £395	Grant (three years) £218
	Renewal (three years) £105	Renewal (one year) £215	Renewal (three years) £191
Highland	Grant/renewal (three years) £247	Grant/renewal (three years) £384	£306 (three years)
Edinburgh	Grant, private hire (one year) £72 Grant, taxi (one year) £91	Grant (one year) £1567	Grant/renewal (one year) £500
	Renewal (private hire/taxi, three years) £156	Renewal (one year) £267	
Glasgow	Grant (one year) £68; (two years) £120; (three years) £162	Grant (one year) £168; (two years) £301; (three years) £402	Grant/renewal (three years) £298
	Renewal (two years) £120; (three years) £162	Renewal (two years) £301; (three years) £402	
Dumfries and Galloway	Grant/renewal (three years) £100	Grant/renewal (three years) £329	Grant/renewal (three years) £329

METAL DEALERS

171. The Bill contains proposals for the reform of licensing arrangements for metal dealers. These proposals are aimed at reducing levels of metal theft by tightening the existing licensing regime for metal dealers that operates under the 1982 Act. The measures include steps to tighten record keeping and customer identification requirements. In addition exemptions are removed that allowed some larger dealers to avoid licensing requirements. A new prohibition is created that would prevent a dealer from paying for metal in cash – thus removing the incentive of ready cash for a potential metal thief.

Costs falling on the Scottish Administration

Scottish Government

172. No costs are anticipated. Once enacted, the costs of administering the licensing regime will fall on local authorities.

Costs on local authorities

173. Paragraph 15 of Schedule 1 to the 1982 Act empowers local authorities to charge reasonable fees - they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under the 1982 Act. The overall impact on local authorities of the proposal in relation to metal dealer licensing therefore should be neutral. Costs are explored

further below but, given that the number of metal dealers is not especially large and given that the current fees for a metal dealer's licence and an exemption warrant are not dissimilar, the impact on licensing authorities should be manageable. The best estimate of the actual costs incurred can be provided by reference to the fees that are charged by licensing authorities for metal dealer and itinerant metal dealer licences. These are detailed in the costs on business section below and range from just over £100 for a three-year licence to as much as £500 a one-year licence.

Costs on other bodies, individuals and businesses

174. The cost to the UK economy of metal theft has been estimated in a report commissioned by the ACPO at £220 million to £260 million per annum. Higher figures have been suggested but it is very hard to measure the consequential costs of many of these thefts. The figure of £220 million to £260 million suggests about £100 million of direct costs to conduct repair and replacements and a further £120 million to £160 million of indirect costs through, for example, commuters being delayed and businesses losing internet connections. Specific data for Scotland is more limited, though it is clear that the cost to Scotland amounts to many millions. A more recent study was conducted by the Association of Chief Police Officers in Scotland and for the first time looked at the situation specifically in Scotland. It estimated the value of metal theft in Scotland at £6.9m for 2011/12 and a further £4.1m for 2012/13. These figures relate purely to the value of the metal stolen and do not look at the indirect costs and collateral damage of these thefts. The measures in the Bill are aimed at bearing down on these costs.

175. There are believed to be 142 metal dealers in Scotland (around 280 licences exist but about 130 of these have ceased trading or are not actively dealing / processing scrap metal despite being in receipt of the relevant licence to do so). The Scottish Government believes around half of these are currently licensed with the remainder exempt from licensing requirements by being in possession of an exemption warrant granted because they are higher turnover businesses. The Bill proposes the abolition of the exemption warrant system so, therefore, around 72 additional businesses will fall into the licensing regime. A further 146 itinerant metal dealers licences are believed to be in existence.

176. The costs to these businesses will vary depending upon the approach taken by the local licensing authority. Dealers would be required to pay a licensing fee (although they will already be paying a fee for an exemption certificate) and to face costs required in order to comply with licensing conditions. The licensing fee is hard to predict since variations in licensing fees and structures from local authority area to local authority area are common. Local licensing authorities operate on a cost recovery basis so that fee income should cover the cost of licensing, without making a profit. Currently the fee for a metal dealers licence for one year in Edinburgh is £504 (the fee for exemption is £1500 for three years). Glasgow City Council charges £124 for one year and £298 for three years (an exemption warrant is £121). Angus Council is £83 for a new application and £69 for renewal. Dumfries and Galloway Council charges £390 for an annual licence and £205 for an annual exemption. North Ayrshire Council's charge is £105 for a three-year licence. Whilst fees will vary, in most cases the change from paying for an exemption warrant to paying for a full licence will not result in significant extra costs.

177. The costs that may be incurred in complying with licensing conditions could also vary considerably depending upon the nature of the conditions imposed. Conditions that affect hours of operation could potentially have a serious impact. Potentially cost requirements could also

include CCTV requirements and improved security. These costs could vary widely depending upon the exact specification. For example CCTV ranges from as little as £200 to several thousand for more extensive and sophisticated systems that may be required for larger premises.

178. Whilst there will be variation due to differences in how licensing is administered locally, many of the costs will be evenly applied due to mandatory requirements being introduced by the Bill. Foremost of these will be the requirement that payment for metal can only be made by prescribed means (these being cheque or bank transfer).

179. With cash no longer being an acceptable form of payment, this will have significant impact on all dealers. England and Wales, amongst several other countries, have already gone 'cashless' although it is still too early to consider all the impacts. An informal industry assessment from the British Metals Recycling Association (BMRA) of the impact in England and Wales commented,

“There are many variables at play (e.g. scrap supply/demand, scrap prices, seasonality, merchant geography and outreach, currency fluctuations etc.) that will have an effect on the amount of trade a merchant will have. Therefore it is very difficult to say precisely what changes to a merchant's business can be attributed to the ban on cash for scrap metal purchases. However, merchants of varying sizes report a loss of around 20% of their previously-cash trade. For small merchants where perhaps 80% of their business was cash-based this equates to 16% of the total (20% of 80%). Larger merchants where fewer cash transactions were made – around 20% - this equates to 4% of the total. Moreover, speaking to the very largest operators, it is apparent that the materials are not coming in to their businesses via alternate routes (e.g. civic amenity contracts etc.) but 'lost' in their entirety. However, what cannot be determined is whether this loss of business can be attributed solely to the cash ban or wider market forces (scrap supply has been weak for the past few months despite high prices, tradesmen stockpiling scrap for fewer, larger deliveries etc.). There have been some gains for merchants, particularly from the small factories/engineering works that previously sold materials for cash to the 'highest bidder' now moving to reputable dealers for payment using electronic or cheque-based means. Despite these gains, business does appear to be depressed for the majority of merchants.

Overall, we believe there has been a reduction in trade of around 5%. Were this to be replicated in Scotland, total potential business loss could be £25 million (assuming total value of the industry in Scotland is around £470 million.)”

180. It is clear that there may be serious impacts, particularly falling on the generally smaller dealers, who are trading to a significant degree in cash currently.

181. Costs associated with removing cash would include start-up costs such as installing card readers and increased banking costs in writing cheques more frequently. A 2012 estimate suggested that two-thirds of industry transactions were already cashless. Within that figure there are wide variations from business to business in what proportion is cashless. As noted in the industry assessment above, some smaller dealers may be conducting 80% of their business in cash.

182. It should be noted that, apart from the main focus of these measures which is tackling metal theft, HM Revenue and Customs considers the scrap metal industry to contain an unidentified “tax gap” – driven in large part by the use of cash.

183. Dealers will also be faced with costs in relation to meeting the record keeping and identification of customer requirements that are being proposed in the Bill. Of themselves, the Scottish Government does not believe that the changes being rolled out to all dealers will result in significant costs. Some smaller dealers may be impacted by the costs of, for example, obtaining photocopiers, scanners and computers. Nevertheless these may be regarded as one-off costs. There is concern that the additional measures may result in businesses being adversely affected by the time needed for compliance.

184. In relation to this aspect of the changes, the BMRA said,

“We estimate there to be around 180,000 cash transactions taking place in Scotland per year.

The amount of time each transaction would take to complete with ID checks and enhanced record keeping on the weighbridge would increase by around 10%. Based on an informal survey of salaries, we predict this additional time would add around £1.40 cost per transaction.

In addition, if a cheque is raised there is a cost of, on average, £0.40 per transaction. There is also a material cost to recording and/ or photocopying ID we estimate to be around £0.30.

Therefore, we predict a total additional cost per transaction to be £2.10 or £378,000 for all currently-cash transactions in Scotland.”

185. It should be noted that dealers in precious metals, e.g. cash-for-gold businesses, are also affected by the changes within the Bill. These types of businesses are already within the definition of a metal dealer so to that extent they are no more affected than any other dealer. Given the proposed change to ensure that all dealers are licensed, there may be higher turnover businesses of this type brought within licensing for the first time.

186. Clearly the costs to industry need to be seen in the context of the very substantial costs to society of metal theft.

PUBLIC ENTERTAINMENT VENUES

187. The Bill will abolish ‘theatre licences’ as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licensing regime provided for in the 1982 Act.

Costs on the Scottish Administration

Scottish Government

188. No costs are anticipated. Once enacted the costs of administering the licensing regime will fall on local authorities

Costs on local authorities

189. Paragraph 15 of Schedule 1 to the 1982 Act empowers local authorities to charge reasonable fees - they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under the 1982 Act. The overall impact on local authorities of the proposal in relation to theatres, therefore, should be neutral. The actual cost of dealing with an application can best be estimated with reference to the fees currently charged. These vary widely depending on the size of the venue (details provided in section on costs on business below).

Costs on other bodies, individuals and businesses

190. There will be some local variation in how the changes to licensing of plays impact upon individual theatre groups. The proposal represents a decrease in regulatory burden overall as it replaces a mandatory regime which required all performances of a play to be licensed with a discretionary regime which would allow a flexible approach to be taken. For example, a licensing authority could determine to exempt all performances of free-to-enter plays or plays with a potential audience of under a specified level. This would allow smaller-scale performances to avoid having to pay licensing fees and also avoid any costs that may be required to ensure compliance with licensing conditions.

191. As there is wide variation in licensing fees from one authority to another, it may be that any theatrical performances that are subject to public entertainment licensing requirements may find themselves subject to fees that differ significantly from those paid in a neighbouring authority (although that is not different to the current situation). It is also possible that the cost of a licence for public entertainment may be less or more than that currently paid.

192. Current theatre licence fees vary widely. For example, Edinburgh City Council already operates a sliding scale depending on the size of capacity with, at the maximum, venues operating commercially with a venue size of over 1000 facing fees of £2,702 for a new application followed by £1,801 for a renewal. A charitable/community organisation pays a fee of £112 a year. Glasgow City Council charges a flat fee of £597. Argyll and Bute Council charges a fee of £139.90. In Clackmannanshire the application fee payable is £85, with no fee payable on an application for grant or transfer of an occasional theatre licence if the play(s) to be performed is/ are of an educational or similar character or are to be performed for a charitable or similar purpose. There is, therefore, a wide variety of fee levels and approaches. It would be for licensing authorities to integrate their current fee charging structure into their public entertainment regime.

SEXUAL ENTERTAINMENT VENUES

193. The Bill contains proposals for the establishment of a licensing regime for sexual entertainment venues.

Costs on the Scottish Administration

Scottish Government

194. No costs are anticipated. Once enacted, the costs of administering the licensing regime will fall on local authorities.

Costs on local authorities

195. Paragraph 18 of Schedule 2 to the 1982 Act empowers local authorities to charge reasonable fees - they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under Schedule 2 to the 1982 Act. The overall impact on local authorities, therefore, should be neutral. The actual cost to the local authority of dealing with an application can best be estimated with reference to the fees currently charged. These do vary significantly from a few hundred to over a thousand pounds, with one authority charging in excess of £12,000 (details in the cost on businesses section below).

196. A particular issue for local authorities is that there is a risk that a decision to refuse a licence, particularly in the case of an application from an operator already working in the sector, may result in costly legal challenge. This would raise particular issues given the very limited number of premises operating in this area. Were a local authority to set the appropriate number of premises for an area as zero, then there would be no fee income from which to recoup the costs of any legal challenges. The costs of a legal challenge would vary significantly depending upon how far a challenge was taken through the legal process but costs of tens of thousands of pounds could reasonably be expected.

Costs on other bodies, individuals and businesses

197. The proposed regime is discretionary, relying upon a resolution of a local authority for it to have effect in a particular local authority area. That being the case it is hard to estimate with confidence how many premises might be subject to licensing. The Scottish Government would anticipate that those urban authorities that have existing lap dancing bars are likely to contemplate a licensing scheme for their areas. Whilst the licensing requirement is wider than lap dancing it would, therefore, expect that at a minimum around twenty premises would be subject to licensing.

198. The costs to these businesses could vary dramatically depending upon the approach taken by the local licensing authority. At the most extreme possibility, as the Bill includes a power for a local authority to set an appropriate number of premises for its area (and for that number to be zero) then potentially existing premises could be closed. Short of that, venues would be required to pay a licensing fee (in addition to the fee already payable for an alcohol premises licence) and to face costs required in order to comply with licensing conditions. The licensing fee is hard to predict since wide variations in licensing fees from one local authority area to another are common. Local licensing authorities operate on a cost recovery basis so that fee income should cover the cost of licensing without making a profit. The closest current equivalent licence is for sex shops. A one-year sex shop licence is £1,329 in Edinburgh. The fee for the same period in Glasgow is £12,798. In Dundee the equivalent fee is £235. The costs that may be incurred in complying with licensing conditions would also vary considerably depending upon the nature of the conditions imposed. Conditions that affect hours of operation could potentially have a serious impact. Potentially costs requirements could also include required CCTV, door security and

improved facilities for workers such as changing and rest areas. These costs could vary widely depending upon the exact detail and specification. For example CCTV ranges from as little as £200 to several thousand for larger more sophisticated systems.

199. Changes to working conditions enforced through licensing are likely to be beneficial to dancers who are currently regarded as self-employed contractors and do not benefit from employment protections. Clearly, if the licensing scheme results in the closure of premises then the resultant loss of employment would be severe for the individuals involved.

200. There may be some economic impact as a result of fewer premises operating although this may be mitigated by the possibility of premises converting to other uses within the night-time economy.

MISCELLANEOUS AND GENERAL

201. There are five provisions, namely:

- Where it has not already been provided for, the deemed grant of a licence where the local authority has failed to determine an application within the required period or the extended period granted by a sheriff;
- Allow a licensing authority to determine to receive electronic communications for a variety of matters.
- Powers in relation to licence conditions in Part 3 of the 1982 Act to clarify that mandatory and standard licence conditions can be set by the Scottish Ministers and local licensing authorities respectively in relation to licences under this part of the Act;
- Power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
- Introduce a new role, civic licensing standards officers (CLSOs);

202. The Scottish Government believes that additional costs in relation to the first three provisions will be nil or minimal. Commentary is provided below on the last two provisions.

Procedure for hearings

Costs on the Scottish Administration

Scottish Government

203. Were the Scottish Government to decide to use this power, the costs associated with updating guidance and preparing regulations would form part of the Scottish Government's existing work and would be met within existing budgets.

Police Service of Scotland

204. There may also be costs for Police Scotland if regulations instigate any changes to its procedures. The extent of these would depend on the detail of the regulations. A key aim of any new requirements on the system would be to bring a consistent approach across Scotland, potentially leading to a simplification of police involvement in hearing processes and, therefore, savings to Police Scotland.

Costs on local authorities

205. Any changes to local practice that result from new regulations will incur costs in relation to changes to policies and updating processes. The extent of these will depend on the detail of the regulations. These costs can be met from fee income. There is a possibility that, after initial costs to change processes, over time processes become more efficient as a result of regulations brought in. There is, therefore, a potential for longer-term savings.

206. Paragraph 15 of Schedule 1 and paragraph 18 of Schedule 2 to the 1982 Act empowers local authorities to charge reasonable fees – they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their functions under the 1982 Act. Any overall increase in costs for local authorities as a result of this proposal, therefore, should be minimal as it can be recouped from fee income.

Costs on other bodies, individuals and businesses

207. Any changes to local licensing authority costs as a result of changes brought in will affect fees paid by applicants and licence holders. This will depend on the detail of the regulations and could vary between local licensing authorities. However, there are consistent calls from legal agents and trade representatives for more consistency and greater standardisation of local authority procedures. The Scottish Government, therefore, believes that ultimately this provision will lead to savings for legal agents and the trade as it becomes more straightforward to operate across different licensing authority areas.

Civic licensing standards officers

Costs on the Scottish Administration

Scottish Government

208. Costs associated with updating guidance will form part of the Scottish Government's existing work and will be met within existing budgets. The provisions do not include powers for the Scottish Ministers to set any requirements for training or to make any further regulations in relation to CLSOs. The Scottish Government does not, therefore, anticipate any ongoing costs for the Scottish Administration in relation to CLSOs.

Costs on local authorities

209. Costs in relation to meeting this requirement will depend on the current provision of this kind of support within the local authority.

210. While the Bill introduces a statutory requirement for a local authority or licensing authority to appoint CLSOs, some local authorities will already have officers employed in similar roles. Their costs will therefore relate to amending job descriptions and providing appropriate training for any additional duties and functions. It is anticipated that this cost is likely to be minimal.

211. Where there is a requirement to recruit new officers, additional costs will be incurred for advertising the post and the total pay package. A similar role was brought in for alcohol licensing under the Licensing (Scotland) Act 2005, the licensing standards officer. Current job advertisements for this type of role offer a salary of £30,000-£35,000 per annum.

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

212. While some local licensing authorities and COSLA have expressed concern at the possible impact on resourcing, the Bill is sufficiently flexible to allow a local authority to meet the requirement in a manner that best meets its needs and circumstances. In general, local licensing authorities have been supportive of the creation of such a role.

213. Paragraph 15 of Schedule 1 and paragraph 18 of Schedule 2 to the 1982 empowers local authorities to charge reasonable fees – they must seek to ensure that the fees are sufficient to meet their expenses in carrying out their licensing functions under the 1982 Act. Any overall increase in costs for local authorities should, therefore, be minimal as they can be recouped from fee income.

Costs on other bodies, individuals and businesses

214. Any changes to local licensing authority costs as a result of changes brought in will affect fees paid by applicants and licence holders. This will vary between local licensing authorities and could lead to an increase in fees. There should, however, be a benefit to applicants and licence holders in receiving a consistent level of support and scrutiny under the local licensing regime.

Summary table of additional costs

	Paragraph reference	Additional costs
Scottish Administration		
<i>Scottish Government</i>		
Air weapons	57	Costs for updating guidance etc. will be met from within existing resources.
	59	A media campaign will be undertaken, with £225,000 budgeted over the run up and first year.
Alcohol	111	No additional costs to the Scottish Government.
Taxis and private hire cars	151	There will be a nil to minimal additional cost in terms of providing guidance on this provision to local licensing authorities.
Miscellaneous and general	203	Procedure for hearings –Costs associated with updating guidance and preparing regulations would form part of the Scottish Government’s existing work and would be met within existing budgets.
	208	Civic licensing standards officers - Costs associated with updating guidance will form part of the Scottish Government’s existing work and will be met within existing budgets.
<i>Police Service of Scotland</i>		
Air weapons	106	A variety of costs have been identified over the run up and first five years. These are broken down as follows:
	82	Net processing costs of £711,000;
	65	Weapons testing and reporting of £450,000;
	82	ICT costs of £50,000; and
	107	Hand-ins and disposals of £30,000.
		These total £1,241,000.

Alcohol	117	Offence of supplying alcohol to a child or young person in a public place – In common with similar offences under the 2005 Act, the Scottish Government would expect Police Scotland to use it to encourage compliance, with only a relatively small number of prosecutions being taken where necessary to protect public safety. Actual costs would depend on the approach taken by Police Scotland.. On the basis of the number of prosecutions under section 105 of the 2005 Act in 2012/13, a possible indicative cost of about £21,950 per annum can be derived.
<i>Scottish Court Service / Scottish Prison Service</i>		
Air weapons	107	A variety of costs have been identified over the first five years. These are broken down as follows: For solemn cases, £176,000; for summary cases, £523,000; for Scottish Prison Service £240,000.
Alcohol	122	Offence of supplying alcohol to a child or young person in a public place – in common with other offences under the 2005 Act, the Scottish Government would only expect a small number of prosecutions where it was necessary to protect public safety. On the basis of the number of prosecutions under section 105 of the 2005 Act in 2012/13, a possible indicative cost of about £85,450 per annum can be derived.
Local authorities		
Air weapons	90	No additional costs identified.
Alcohol	135	Licensing objectives and statements of licensing policy – reducing the frequency of Boards reviewing their Licensing Policy Statement, could potentially result in a 40% saving from existing costs. It will be for individual Boards to determine whether to review their licensing policy statement more often than every five years.
	137	Greater powers for Licensing Boards and Police – it is difficult to estimate any additional costs for Boards because it largely depends on the manner in which they deploy these powers within the exercise of their existing functions. It is anticipated that any additional cost is likely to be minimal. A more detailed consideration of individual licence and applications will improve the existing licensing regime and improve compliance over the long term.
	142	Relevant offences and foreign offences- removal of automatic requirement for a hearing – Removing the requirement will lead to ongoing savings to Boards.

	143	Duty of Licensing Boards to produce annual financial reports – Boards already base their fees on cost recovery so publishing these calculations should not require significant additional resource. It is anticipated that any additional costs arising from this should be minimal.
Taxis and private hire cars	152 - 157	Refusal to grant private hire car licences on grounds of overprovision – no automatic costs, but where used, an assessment is likely to cost in the region of £15,000 to £20,000 each three years. There would also be costs in developing and considering a policy and defending decisions. Costs could be recovered through fees.
	163	Testing of private hire car drivers – the Scottish Government would only expect a local licensing authority to introduce testing of private hire car drivers where they believed that there was a need or that it would make a positive impact on the trade. It would be possible for licensing authorities to draw upon existing training for taxi drivers, or work jointly with other licensing authorities to save on the costs of developing new materials.
	168	Exemption from requirements of section 10 to 21 – the costs of processing additional applications would be recouped from the fees.
Metal dealer	173	The overall impact on local authorities of the proposal in relation to metal dealer licensing should be neutral. The best estimate of the actual costs incurred can be provided by reference to the fees that are charged by licensing authorities for metal dealer and itinerant metal dealer licences. These range from just over £100 for a three-year licence to as much as £500 a one-year licence.
Public entertainment venues	189	The overall impact on local authorities of the proposal in relation to theatre licensing should be neutral. The actual cost of dealing with an application can best be estimated with reference to the fees currently charged. These vary widely depending on the size of the venue from as little as under £100 to £2,700 for a venue with a capacity of over 1,000.
Sexual entertainment venues	195 - 196	The overall impact on local authorities of the proposal in relation to sexual entertainment venue licensing should be neutral. The actual cost to the local authority of dealing with an application can best be estimated with reference to the fees currently charged. These do vary significantly from a few hundred to over a thousand pounds, with one authority charging in excess of £12,000 There may be costs if it is decided to refuse a licence, and this is appealed, particularly if the limit is set at zero and there is no fee income. The costs of a legal challenge would vary significantly depending upon how far a challenge was taken through the legal process but costs of tens of thousands of pounds could reasonably be expected.

Miscellaneous and general	205	Procedure for hearings – any initial additional costs can be met from fee income, but procedures should become more efficient thus reducing costs.
	209 - 213	Civic licensing standards officers - any additional costs should be minimal and could be recovered from fee income.
Other bodies, individuals and businesses		
Air weapons	91 - 95	Registered firearms dealers – there may be an impact on sales figures but this is not expected to be large.
	96-97	Shooting clubs – a fee will be payable by clubs to help meet the costs of the approval process. The Scottish Government believes that the overall impact should be very small when viewed against overall costs.
	98	Shooting organisations – the Scottish Government does not consider that there will be any significant impact on shooting organisations.
	99	Tourism – The Bill provides for a system of visitor permits for those who visit Scotland with their own air weapons or to shoot in Scotland. The exact level of fees has not yet been set, the current fee for a firearms visitor permit is set at £12, whereas processing costs for an air weapons visitor permit are likely to be around £20. Cost of this level would have little material impact on visitors to Scotland.
	100	Recreational shooting – the Bill provides for event permits, to allow the applicant to organise and promote specific events at which air weapons shooting is to take place. The costs of processing an application for a permit to operate such an event are estimated to amount to some £60-£70 per event. Such a cost is likely to be small in comparison to the overall cost of staging and promoting such an event.
	101-104	Fees – the Bill provides for a tariff of fees to be charged at the point at which a person applies for an air weapons certificate, permit or for other approvals. The fee will be payable regardless of whether or not a certificate is granted. For the grant of a certificate, the current firearms / shotgun fee is £50, while the estimated cost of

		<p>processing an air weapons application is £85.</p> <p>For the renewal of a certificate the current firearms / shotgun fee is £40, there are a range of estimates from £20 to £40, with cost recovery being estimated at £20.</p> <p>For a police permit, there is no equivalent for firearms and shotgun licensing, and an estimate of £10 is provided which will represent cost recovery.</p> <p>For a visitor permit, the current firearms / shotgun fee is £12, there are a range of estimates from £15 to £20, with £20 representing cost recovery.</p> <p>For an event permit, there is no equivalent for firearms and shotgun licensing, and there is a range of estimates, with £65 representing cost recovery.</p> <p>For an air weapons club, the current firearms / shotgun fee is £84, and there is a range of estimates, with £100 representing cost recovery.</p>
Alcohol	146	<p>Relevant offences and foreign offences- removal of automatic requirement for a hearing – For a national business, this could remove a requirement to attend hearings at every Board within Scotland. Many businesses choose to have legal representation for such hearings, so the potential cost saving could be significant for larger businesses but the extent of this saving to each of these will depend, amongst other things, on the number of local authority areas the business operates in.</p>
	148	<p>Removal of the five-year bar on re-applying for a personal licence that has been revoked for failure to submit evidence of refresher training – Whilst it is difficult to quantify the savings to businesses and individuals, substantial disruption and additional training will be avoided for businesses, and individuals.</p>
Taxis and private hire cars	158 - 159	<p>Refusal to grant private hire car licences on grounds of overprovision – there may be additional costs for licence holders if fees are increased. The provision will not apply to existing licence holders, and it is only envisaged that it would be used where there might not be a viable business for new entrants.</p>
	164	<p>Testing of private hire car drivers – there may be a cost of undertaking a test, likely to be in the region of £50 and the time taken to study and take the test.</p>
	170	<p>Exemption from requirements of sections 10 to 21 of 1982 Act – costs for new entrants of obtaining a licence and meeting requirements.</p>
Metal dealer	174 - 186	<p>Costs for those now required to pay a licence fee, although they will already be paying for an exemption certificate, complying with the new requirements, and a possible reduction in trade of</p>

		around 5%.
Public entertainment venues	190 - 192	There is a wide range of fees charged by local authorities and costs would depend on these.
Sexual entertainment venues	197 - 200	Costs would depend on the fees set by local authorities choose to implement and any conditions set.
Miscellaneous and general	207	Procedure for hearings – there may be specific costs incurred if the regulations cover liability for expenses. These costs would be met by the individual found liable.
	214	Civic licensing standards officers – any change in fees will affect the trade, however they should benefit from a more consistent level of support and scrutiny.

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

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 14 May 2014, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Air Weapons and Licensing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 14 May 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Air Weapons and Licensing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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AIR WEAPONS AND LICENSING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Air Weapons and Licensing (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by Parliament.

Outline of Bill provisions

3. The purpose of Part 1 of the Air Weapons and Licensing (Scotland) Bill is to protect public safety by creating a new licensing regime for air weapons. Parts 2 and 3 of the Bill aim 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. A number of the provisions in Parts 2 and 3 are directed at improving the efficiency of the operation of the licensing regimes contributing to the creation of a better regulatory environment for business.
4. Alongside the regulation of air weapons, the Bill amends the Licensing (Scotland) Act 2005 ('the 2005 Act', licensing alcohol) and the Civic Government (Scotland) Act 1982 ('the 1982 Act', covering other local licensing regimes). The key provisions include:
 - Giving local authorities the power to regulate sexual entertainment venues in their areas so that both performers and customers benefit from a safe, regulated environment;
 - Closing a loophole allowing adults to supply under-18s with alcohol for consumption in a public place;
 - Extending the breadth of information available to Licensing Boards to enable them to make better alcohol licensing decisions;

- Removing an exemption from licensing for metal dealers with a larger turnover; banning cash payments for metal by metal dealers or itinerant metal dealers; Removing the mandatory requirement that metal dealers should not process metal for 48 hours after receiving it;
- Allowing licensing authorities to refuse private hire car licences on the basis of overprovision and to require testing of private hire car drivers. The Bill will also remove an exemption from licensing for hire cars used on contract;
- The creation of a new role - the ‘Civic Licensing Standards Officer’ - with specific functions to provide information and guidance, check compliance, provide mediation and take appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act.

Rationale for subordinate legislation

5. In deciding whether provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has considered the need to:

- Strike the right balance between the importance of the issue and providing sufficient flexibility to respond to changing circumstances without the need for primary legislation;
- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;
- Make proper use of valuable parliamentary time;
- Allow detailed administrative arrangements to be kept up to date within the basic structures set out in the Bill; and
- Take account of the likely frequency of amendment.

6. The relevant provisions are described in detail below. For each provision, the memorandum sets out:

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- Why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

DELEGATED POWERS

Part 1 – Air Weapons

Section 2(4) – Power to add or modify exemptions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

7. Section 2 makes it an offence for a person to use, possess, purchase or acquire an air weapon (as defined in section 1) without holding a valid air weapon certificate. Subsection (3) introduces schedule 1, which sets out a number of exemptions from the requirement to hold an air weapon certificate, and certain other offences created by the Part.

8. Subsection (4) provides the Scottish Ministers with the power to add, remove or modify exemptions in schedule 1 by regulations.

Reason for Taking Power

9. The list of exemptions from the requirement to hold an air weapon certificate (as well as certain other offences) in schedule 1 is drawn from a number of sources, primarily existing UK firearms legislation, as well as views put forward by members of the Scottish Firearms Consultative Panel and consultation respondents regarding suitable air weapon use. The Scottish Government considers that the schedule currently captures all of the detailed situations where air weapon possession and use without a certificate should be permissible. However, it is possible that the list may require to be amended in the future, for example to reflect changing practices, new technologies or events in general. It is considered appropriate to have the flexibility to make any such changes – which are likely to be detailed in nature and could be needed quickly – by subordinate legislation, rather than requiring further primary legislation.

Reason for Choice of Procedure

10. Amending the schedule of exemptions would change the provisions of the Act as agreed by Parliament and, separately, might potentially have significant impacts on certain individuals or businesses (for example, by criminalising certain activities if an air weapon certificate is not held). The Scottish Government therefore considers it appropriate that changes be subject to the affirmative procedure, to ensure that full consideration can be given by Parliament to them and their potential impact.

Section 8(3) – Power to modify duration of air weapon certificate

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

11. Section 8, subsection (1)(b) sets the normal duration of air weapon certificates at 5 years, except in the case of a certificate issued to a 14-17 year old, where subsection (1)(a) provides that the certificate expires on the holder's 18th birthday.

12. Subsection (3) provides Scottish Ministers with the power to change the 5 year duration of air weapon certificates in subsection (1)(b).

Reason for Taking Power

13. The 5 year duration for most air weapon certificates matches current arrangements for firearm and shotgun certificates issued under the 1968 Act, which remain reserved to Westminster. It is considered appropriate to have the flexibility to change this duration to mirror future changes to the arrangements for firearm or shotgun certificates by the Westminster Government or to reflect changing policy, for example following devolution of all firearms powers to the Scottish Parliament. This would ensure that all types of certificate can continue to be issued co-terminously.

Reason for Choice of Procedure

14. It is considered appropriate that such an amendment be subject to the affirmative procedure, to ensure that full consideration can be given to the potential impact and because any change would amend the text of the Act directly.

Section 20(3) – Power to modify duration of approval of an air weapon club

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

15. Section 20, subsection (1) sets the duration of air weapon club approvals at 6 years. The Chief Constable may approve an air weapon club and in doing so impose conditions. Such approval allows members of these clubs to benefit from the exemption in paragraph 1 of schedule 1 and allow them to put forward approved club membership as evidence that they meet the good reason test in section 5(1)(c).

16. Subsection (3) provides Scottish Ministers with the power to amend subsection (1) to specify a different period.

Reason for Taking Power

17. As with certificate durations set out above, the 6 year duration for air weapon club approvals matches current arrangements for rifle club approvals under the Firearms (Amendment) Act 1988, which remain reserved to Westminster. Again, the Scottish Government considers it is appropriate to have the flexibility to mirror changes made by the Westminster Government, or to reflect changing policy, for example following devolution of all firearms powers to the Scottish Parliament. This would ensure that approvals for rifle clubs and air weapon clubs can continue to be issued co-terminously.

Reason for Choice of Procedure

18. It is considered appropriate that such an amendment be subject to the affirmative procedure, to ensure that full consideration can be given to the potential impact and because any change would amend the text of the Act directly.

Section 36(1) – Power to prescribe fees

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

19. Section 36 allows Scottish Ministers to set out fees for various aspects of the air weapon licensing regime in secondary legislation.

Reason for Taking Power

20. The Chief Constable will be able to charge a fee for a wide range of functions relating to the administration of the air weapon licensing regime, including considering an application for an air weapon certificate or permit, varying or renewing a certificate that has previously been granted, and replacing lost or damaged certificates. Fees will also be different depending on individual circumstances: for example, a reduced fee for an air weapon certificate that is co-terminous with a firearm or shotgun certificate; or a reduced fee for a short-term air weapon certificate granted to an under-18 that expires on their 18th birthday. In order to allow sufficient flexibility to take account of future changes in practice and cost, it is considered appropriate that the detailed tariff of fees be set out in secondary legislation, rather than on the face of the Bill.

21. Separately, it will be necessary from time to time to adjust this tariff of fees, for example in line with inflation, to maintain consistency with wider firearm and shotgun licensing fees (which are currently set by the Westminster Government), or to reflect other changes to the air weapon licensing regime such as the adoption of new licensing processes.

Reason for Choice of Procedure

22. The setting and adjustment of fees in relation to the air weapon licensing regime is likely to reflect, directly, practical factors such as inflation and police operational costs. The fees are also likely to be detailed and technical in subject-matter. Regulations setting fees are typically made by negative procedure, e.g. fees under section 25 of the Marine (Scotland) Act 2010, section 136 of the Licensing (Scotland) Act 2005, Schedule 10 to the Gambling Act 2005 and section 43 of the Firearms Act 1968. It is therefore considered appropriate that the negative procedure be used, to allow for speed and flexibility and to provide the balance required between scrutiny and the use of valuable parliamentary resources.

Section 37(1) – Power to make further provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

23. Section 37 allows Scottish Ministers to make regulations for the purposes of the Part and in particular for setting out detailed provisions regarding the application and grant process for air weapon certificates, police permits, visitor permits, event permits, or club approvals.

Reason for Taking Power

24. This is a broadly framed power to allow the administrative minutiae of the air weapons licensing regime to be set out in secondary legislation. This will include, for example, setting out application forms for air weapon certificates, permits, and air weapon club approvals, as well as setting out the standard format that these certificates, permits and approvals must take if granted. Regulations may also set out details such as mandatory conditions to be attached to all air weapon certificates, permits and club approvals, and information that must accompany applications (e.g. photographs).

25. Because these regulations will contain a considerable level of administrative detail, it is considered appropriate that they be dealt with through secondary legislation rather than on the face of the Bill. It may also be necessary to amend the administrative arrangements set out in the regulations from time to time, which is more efficiently achieved through secondary legislation.

Choice of Procedure

26. As with delegated powers for air weapon licensing fees, air weapon licensing regulations are likely to be detailed and administrative in nature, and may require to be amended periodically and potentially at short notice. It is therefore considered appropriate that the negative procedure be used so as to achieve the best balance between use of parliamentary time on the one hand and the nature of the content of the regulations on the other.

Part 2 – Alcohol

Section 55 – Power to make provision about annual financial reports

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative procedure - where regulations contain provisions which amend section 9A(3). Negative procedure – where the regulations do not amend the primary legislation.

Provision

27. Section 55 inserts section 9A into the 2005 Act requiring Licensing Boards to produce an annual financial report on their alcohol licensing activities.

28. Section 9A(6) gives Scottish Ministers a regulation making power to make further provision about reports under this section, including provision about the form and content of reports; further details on what constitutes relevant income and relevant expenditure; and the publication of reports.

Reason for Taking Power

29. Rather than set out a definitive list of what can be included in the annual financial report on the face of the Bill, it is considered appropriate to provide such detail in subordinate legislation. This will allow Scottish Ministers the flexibility to modify the details of such financial reports without amending primary legislation. However, it is also recognised that there might be situations where it is appropriate to adjust the definitions in section 9A itself and accordingly the provision caters for that possibility.

Choice of Procedure

30. Where the regulations will amend the text of primary legislation it is considered appropriate to allow Parliament to have a greater level of scrutiny as afforded by affirmative procedure. However where the regulations are merely technical requiring publication of the report or specifying the format of such, then it is considered that such will be of limited effect and impact and therefore negative procedure would provide the appropriate balance between scrutiny and the use of valuable parliamentary resources.

Section 59 – Extension of powers to make provision about forms of applications etc.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

31. Section 59 slightly expands the regulation making power already provided for at section 134 of the 2005 Act in relation to the form etc. of applications, proposals and notices to also

include other communications. For example, 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.

Reason for Taking Power

32. Section 134 of the 2005 Act allows the Scottish Ministers to make regulations in respect of applications, proposals and notices under the Act. This has been broadened slightly to also include ‘other communications required’ to enable the Scottish Ministers to make regulations to provide explicit compliance with the requirements of the EU Services Directive in relation to the EU Services Directive, Article 8, ‘Procedures by electronic means’, namely that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means.

Choice of Procedure

33. This regulation making power is subject to negative procedure as per section 146(4) of the 2005 Act. The changes made to its breadth are not such that the procedure needs to be revisited. As these regulations relate to practical and administrative matters, the negative procedure continues to provide the appropriate balance of scrutiny and use of parliamentary resource.

Part 3 – Civic Licensing

Taxis and Private Hire Cars

Section 62 – Power to specify exemptions to the licensing regime for taxis and private hire cars

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

34. Section 62 amends section 22 of the 1982 Act to remove the exemption currently provided in paragraph (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 amendment brings vehicles that are being used on contract in this manner into the licensing regime for taxis and private hire cars.

35. Subsection (4) inserts section 22(2) into the 1982 Act to provide the Scottish Ministers with the power to specify by regulations further exemptions from taxi and private hire car licensing regime.

Reason for Taking Power

36. By removing the ‘contract exemption’ from taxi and private hire car licensing, the Bill is widening the scope of types of operation that could be covered by taxi and private hire car licensing. England and Wales repealed a similar exemption in 2008 and a review¹ of that process highlighted as one of the unintended consequences a degree of confusion in what should be covered by the licensing regime (following the repeal). The Scottish Government intends to address this prior to commencement with clear guidance. However, if it transpires that types of service not intended to be covered are routinely being swept up in taxi and private hire car licensing (with the removal of this exemption), this regulation making power will be used to specifically exempt them.

37. An example would be where a service is providing some kind of transport as an ancillary part of the wider service where the transport aspect is not the main focus. It is considered appropriate to have the flexibility to make any such additional exemptions by subordinate legislation, rather than requiring further primary legislation. Additional exemptions may require to be made quickly in order to provide that individuals or businesses not intended to be covered by the licensing regime are not inadvertently faced with the requirements of complying with the licensing regime.

Choice of Procedure

38. The regulations are subject to negative procedure which is considered appropriate. It is not intended that the regulations will change the provisions of the Act. Instead they will provide the flexibility to provide additional exemptions to the taxi and private hire car licensing regime as a need to do so is identified. It is anticipated that further exemptions from licensing which may be provided by this regulation making power are unlikely to be disputed and consequently it should not be necessary to require a debate on each occasion that it is used. As such, it is considered that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny and the use of valuable parliamentary resources.

Metal Dealers

Section 65 – Power to make provision about acceptable forms of payment for metal

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

39. Section 65 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.

¹ ‘Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption’, Judith Rogers and Sarah Ridley, 4 November 2009

40. Section 33A(7) provides Scottish Ministers the power by regulation to add, amend or remove forms of payment that are acceptable. It also enables the Scottish Ministers to make appropriate consequential modifications to the record keeping requirements specified in section 33B(3).

Reason for Taking Power

41. The purpose of section 33A is to specify the types of payment methods permitted for the purchase of metal in order to make metal transactions more traceable and provide an effective audit trail. The overall intention is to combat instances of metal theft. However, methods of payment are subject to change due to rapidly changing technology and consumer habits. It is considered appropriate to have the flexibility to add to, amend or remove the specified payment methods by subordinate legislation, rather than requiring further primary legislation. There may be a need to respond quickly if currently specified methods of payment no longer achieve the overall intention of section 33A and/or where new methods of payment provide the appropriate level of traceability and audit. This will ensure the legislation can keep pace with these types of change and ensures metal dealers and itinerant metal dealers can keep pace with appropriate new technology.

Choice of Procedure

42. Amending the new section 33A(2) would change the provisions of the Act as agreed by Parliament and, separately, might potentially have significant impacts on certain individuals or businesses. The Scottish Government therefore considers it appropriate that changes be subject to the affirmative procedure, to ensure that full consideration can be given by Parliament to them and their potential impact.

Section 66 – Power to make provision about metal dealers’ records

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

43. Section 66 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.

44. Subsection (6) of section 33B provides the Scottish Ministers with the power to amend the record keeping requirement by regulations.

Reason for Taking Power

45. The power allows for the requirement of additional information to be recorded by metal dealers or itinerant metal dealers. This could be used, for example, to specify particular forms of identification as being acceptable. It is considered appropriate to have the flexibility to make any such additional requirements by subordinate legislation, rather than requiring further primary legislation.

Choice of Procedure

46. The regulations are subject to negative procedure which is considered appropriate. It is not intended that the regulations will change the provisions of the Act. Instead they will provide the flexibility to require additional information to be recorded by metal dealers and itinerant metal dealers. It is not anticipated that this additional information, such as specification for acceptable forms of identification, will be controversial and consequently it should not be necessary to require a debate on each occasion that it is used. As such, it is considered that the use of negative procedure would be appropriate here bearing in mind the balance required between scrutiny and the use of valuable parliamentary resources.

Sexual Entertainment Venues

Section 68 – Power to specify premises that are not sexual entertainment venues

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

47. Section 68 creates a new licensing regime for sexual entertainment venues by inserting section 45A into the 1982 Act. Section 45A establishes what is meant by a sexual entertainment venue and provides definitions of ‘audience’, ‘financial gain’, ‘organiser’, ‘premises’, ‘sexual entertainment’ itself and ‘display of nudity’.

48. Sex shops are specifically identified as not being sexual entertainment venues at section 45A(7)(a). A power is provided at section 45A(7)(b) to allow Scottish Ministers to prescribe other types of premises that are not sexual entertainment venues.

Reason for Taking Power

49. The inclusion of this power allows the Scottish Ministers to respond quickly and flexibly in circumstances where venues are inadvertently caught under the legislation and it was not intended that such venues would be subject to this licensing regime.

Choice of Procedure

50. It is considered that this power has a very narrow focus and will be used in very limited circumstances. Accordingly it is considered that negative procedure would be appropriate to provide the balance required between scrutiny and the use of valuable parliamentary resources, particularly given that the Scottish Government would like to be able to act swiftly to avoid inappropriate venues being required to apply for licences.

Section 68 – Power to provide for descriptions of performances or descriptions for displays of nudity which are not to be treated as sexual entertainment.

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

51. A further power is provided for in section 45A(11) of the 1982 Act to allow 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.

Reason for Taking Power

52. This power allows the Scottish Ministers to respond quickly and flexibly if types of performance are being inadvertently included within the sexual entertainment venue licensing regime that were not intended to be covered.

Choice of Procedure

53. Again, as in paragraph 50, it is anticipated that the use of this power will have a very narrow focus and be utilised only in very limited circumstances. It is to be used swiftly to avoid the unnecessary licensing of certain performances which were not intended to be caught under the regime and therefore it is considered that negative procedure is appropriate here to provide the balance required between scrutiny and the use of valuable parliamentary resources.

Miscellaneous and general

Section 70 – Power to make provision about hearings of licensing authorities

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative Procedure

Provision

54. Section 70 amends the 1982 Act by inserting paragraph 18A, in Schedule 1 and inserting paragraph 24A in Schedule 2. The new paragraphs create regulation making powers to allow the

Scottish Ministers to make provision about hearings in relation to activities licensed under Parts 1 to 3 of the 1982 Act. The regulations may cover notice of hearings, rules of evidence, representation, timescales for steps in the procedure, and liability for expenses. The regulations may differentiate between different purposes, for example, different types of licence.

Reason for Taking Power

55. These powers will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted. There is a similar power in the 2005 Act to cover alcohol licensing. There are some similarities in the needs of participants in hearing processes under alcohol and civic regimes. If any issues are being resolved in relation to hearings under alcohol licensing, using the similar power, it would be helpful to be able to transfer any useful practice across to the civic regimes.

Choice of Procedure

56. It is anticipated that the making of regulations in relation to hearings is unlikely to be controversial. They will primarily be used for regulating and standardising procedure. The detailed preparation of the regulations will be done in consultation with relevant bodies, including local authorities and consequently it is considered that the use of negative procedure would be appropriate here bearing in mind the balance between scrutiny and the use of valuable parliamentary resources.

Section 71 – Power to prescribe mandatory conditions

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative Procedure

Provision

57. This section allows Ministers to set mandatory conditions that would apply to all licences issued under Part 3 of the 1982 Act, including the regime for sexual entertainment venues (inserted by section 69). The condition setting power is broad, would be specified by order and could encompass different licences and particular purposes and sets of circumstances or cases.

Reason for Taking Power

58. This recreates powers that already exist in respect of other activities licensed under Part 2 of the 1982 Act. The ability to set conditions is a core element of most licensing regimes. This will allow Scottish Ministers to set mandatory conditions to ensure that licensing is able to achieve objectives such as ensuring public safety.

Choice of Procedure

59. A similar power in respect of Part 2 licences is subject to affirmative procedure. It is considered that such procedure would also be appropriate here as the power may have a fairly

significant impact on licence holders and as such full consideration of it should be available to Parliament.

Part 4 – General Provision

Section 76 – Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative procedure - where regulations amend primary legislation. Negative procedure - where the regulations do not amend primary legislation.

Provision

60. Section 76 confers on the Scottish Ministers a power to make incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, or in consequence of, or for giving full effect to, any provision of this Act or any provision made under it.

Reason for Taking Power

61. Any body of new law or regulatory regime may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplementary and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament's or the Government's resources. The power itself is circumscribed by being entirely ancillary to the provisions of the Bill and any such provision must be for the purposes of the Bill or in consequence of it or for giving full effect to it. In addition, with the introduction of new regulatory regimes and the adjustment of several existing licensing regimes, it is considered possible that significant transitional, transitory or savings provision may be required to ensure that the regimes are introduced (or continue to function) smoothly with the minimum of disruption to both the licensing authorities and the licensees. It is appropriate for significant transitional, transitory or saving provision (as opposed to routine provision connected to commencement) to be subject to parliamentary procedure.

Choice of Procedure

62. Section 75(3) of the Bill provides that any regulations made under section 76 will be subject to affirmative procedure if it contains provisions which make textual changes to an Act. Otherwise, it will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation while ensuring that other ancillary provision is still subject to appropriate scrutiny by Parliament.

Section 78 – Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Order made by Scottish Statutory Instrument

Parliamentary procedure: No parliamentary procedure

Provision

63. This section provides that all of the provisions of the Bill, except certain provisions in Part 4 containing definitions and subordinate legislation making powers, shall come into force on a day specified by the Scottish Ministers by order.

Reason for Taking Power

64. In a Bill of this nature which makes a number of reforms, the decision on when and to what extent the Bill is commenced is best determined by the Scottish Ministers, particularly as Ministers may wish (or find it appropriate) to commence provisions at different times. Transitional, transitory and saving provision may be made by a commencement order and the Scottish Government considers that those ancillary powers are required to ensure that, for example, pre-existing situations may be dealt with appropriately when Bill provisions are commenced.

Choice of Procedure

65. Section 78 has the effect that any such commencement order will not be subject to parliamentary procedure. This is typical of commencement powers and is justified having regard to the administrative nature of commencement of the Bill provisions which have been agreed to by the Scottish Parliament.

This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Air Weapons and Licensing (Scotland) Bill introduced in the Scottish Parliament on 14 May 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 49–EN.

POLICY OBJECTIVES OF THE BILL

2. The principal policy objectives of this Bill 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. This is being achieved through reforms to the existing systems to alcohol licensing, taxi and private hire car licensing, metal dealer licensing and; giving local communities a new power to regulate sexual entertainment venues in their areas. The Bill will also protect public safety by creating a new licensing regime for air weapons.

3. A number of the provisions will also improve the efficiency of the operation of the licensing regimes contributing to the creation of a better regulatory environment for business.

4. The Bill contributes to the Scottish Government's purpose of focussing public services on creating a more successful country with opportunities for all to flourish.

5. The key national outcome which the Bill will support is that we live our lives safe from crime, disorder and danger. It will also support our living longer, healthier lives; our public services being high quality, continually improving, efficient and responsive to local people's needs, and our living in a Scotland that is the most attractive place for doing business in Europe.

6. The key justice outcomes that the Bill will contribute to are: that we are at a low risk of unintentional harm; that we experience low levels of fear, alarm and distress; that we experience low levels of crime, and; that our institutions and processes are effective and efficient.

Air weapons

7. The Bill creates a licensing regime for air weapons. The Scotland Act 2012 gave the Scottish Government the powers to introduce a licensing system for air weapons in Scotland. The regime provided for in this Bill recognises the need to protect and reassure the public in a

way which is proportionate and practicable. The Bill will help ensure that only people with a legitimate reason for possessing and using an air weapon will have access to them in future, as well as taking air weapons out of the hands of those who would use them illegally. Air weapons licensing will be administered by the Police Service of Scotland.

Alcohol licensing

8. The Bill improves the effectiveness of the alcohol licensing regime laid out in the 2005 Act (“the 2005 Act”). It makes it an offence to supply alcohol to people aged under 18 for consumption in a public place as well as taking forward a range of technical recommendations to clarify and improve the operation of the current alcohol licensing legislation to ensure effective regulatory processes and to reduce unnecessary burdens on business.

Civic licensing

9. The Bill improves the effectiveness of the Civic Government (Scotland) Act 1982 (“the 1982 Act”) licensing regimes with a variety of reforms. The Bill will include provisions to extend the reach of taxi and private hire car licensing to protect the public and legitimate trade; the tightening of the licensing of metal dealers to ensure more effective regulation of the industry and to make it more difficult for metal thieves to dispose of stolen metal; as well as a range of cross-cutting additional amendments to improve the various civic licensing regimes and ensure effective regulatory burdens and reduce unnecessary burdens on business.

10. The Bill also creates a new licensing scheme for sexual entertainment venues. The Scottish Government considers it appropriate that sexual entertainment venues should be licensed in order that the risk of adverse impacts on neighbours, general disorder and criminality is reduced and both performers and customers can benefit from a safe, regulated environment. Central to this proposal is the belief that local communities should be able to exercise appropriate control and regulate sexual entertainment venues that operate within their areas. Local licensing authorities are best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under what conditions. The Scottish Government believes that communities should be able to limit the number of these licences in their area.

BACKGROUND

11. The purpose of licensing is to limit or control activities which, while legitimate and permitted, are considered to have the potential to be harmful or disruptive. Licensing protects the public interest, for example in supporting public safety, as with air weapons and taxi and private hire car licensing, supporting public order and public health, as with alcohol licensing, or reducing the risk of criminality infiltrating legitimate commercial activity, as with scrap metal dealer licensing.

12. The Scottish Government believes that it is important that people have a say in the decisions that impact on the safety, health and amenity of their local communities. The existing licensing regimes set out in the 2005 Act and the 1982 Act, where local authority councillors are directly responsible for making key decisions in relation to licensing works well. Provisions of this Bill in respect of alcohol and civic licensing are designed to be complementary to this

overall approach. The Scottish Government does, however, also recognise the value of consistency across licensing regimes for both businesses and the broader public. Specific provisions in this Bill as well as existing licensing legislation and the provisions of the Regulatory Reform (Scotland) Act 2013 are aimed at promoting regulatory consistency where this is practical and appropriate.

13. The Air Weapons and Licensing (Scotland) Bill draws upon a wide range of engagement and consultation exercises across the various existing licensing regimes. While, the Scottish Government believes that the existing legislation, the 2005 Act and the 1982 Act, continue to serve the people of Scotland well, those involved in licensing, such as councillors, trade, police and lawyers, have made a range of suggestions in relation to extant licensing regimes. This Bill therefore amends the existing legislation to take forward those which were considered to be most effective and practical.

14. It is in keeping with the Scottish Government's objective of a Scotland that is the most attractive place for doing business in Europe that the Scottish Government ensures that the regimes avoid imposing undue financial or administrative burdens on business. There are a wide variety of provisions that seek to deliver this aim. In relation to alcohol licensing, undue delay will be avoided because licences will be granted automatically after a period of nine months; local authorities will be obliged to publish financial accounts in relation to their licensing activities which inform the licensing fees charged to businesses; national businesses will no longer be compelled to attend hearings in every Board area if a connected person is convicted of a relevant offence; and they will have to engage less frequently if policy statements are updated less frequently. In relation to scrap metal dealers the Bill will remove the mandatory 48 hour restriction on the processing of scrap.

15. The Bill also creates two new licensing regimes.

16. Proposals for a separate licensing regime for sexual entertainment venues were first brought to the Scottish Parliament in 2010 as a Stage 2 amendment to the Criminal Justice and Licensing (Scotland) Bill. A key argument for rejecting these proposals was that the sexual entertainment activities were already regulated under the alcohol premises licences. Since then, the regulatory context has changed with recent court judgements calling into question the ability of Licensing Boards to set conditions that stray from a tight focus on the sale of alcohol. This has created some uncertainty as to the continued regulation of sexual entertainment, with many Licensing Boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate regulation. The view of the Scottish Government is that a specific licensing regime for sexual entertainment venues is the best solution to provide clarity for future regulation of the industry. It offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances.

17. The Scottish Government has a long standing commitment to modernise the law around air weapons, to better protect Scotland's communities. Powers to regulate air weapons were transferred to the Scottish Parliament by the Scotland Act 2012, on 3 July 2012. The Scottish Government has developed a regime for air weapons which is related to the existing licensing regime in relation to firearms administered by the police. The licensing regime for air weapons will likewise be administered by the Police Service of Scotland. It has been developed by

working closely with the police and the Scottish Government consider the regime will protect and reassure the public while being proportionate and practicable.

CONSULTATION

18. The content of the Bill is predicated on the results of five separate public consultations conducted between November 2012 and September 2013:

Air weapons

19. In preparation for the powers to regulate air weapons being transferred to the Scottish Parliament the Cabinet Secretary for Justice established, in November 2011, the Scottish Firearms Consultative Panel (SFCP) which met four times to consider how best to develop a scheme to license air weapons. Membership of the Panel consisted of the police, the Crown Office and Procurator Fiscal Service, the British Association for Shooting and Conservation, the Scottish Target Shooting Federation, the Gun Trade Association, the British Shooting Sports Council, the Scottish Air Rifle and Pistol Association, the Gun Control Network, the Scottish Community Safety Network, the Convention of Scottish Local Authorities and the Scottish Government.

20. Following the work of the SFCP a public consultation ran from 14 December 2012 to 15 March 2013 on methods by which air weapons licensing could operate. 1,101 responses were received and all non-confidential responses were published on the Scottish Government website on 3 May 2013, followed by an independent report analysing these responses on 19 July 2013. The consultation paper itself, along with the responses and an independent analysis of them can be found at the following link:

<http://www.scotland.gov.uk/Topics/Justice/crimes/Firearms/governmentaction/airweaponlicensing>

21. While generating considerable opposition to the general principle of regulating air weapons the consultation was a valuable exercise in highlighting many practical issues and drawing out concerns around the high-level proposals set out in the consultation paper. While the Scottish Government was clear that the consultation was not designed to discuss the overall, and clearly stated principle of introducing licensing for air weapons, it has taken account of all the views submitted in developing the Bill provisions. In particular, the Scottish Government welcomed and has built on many of the constructive comments received.

Alcohol licensing

22. The Scottish Government consulted on Further Options for Alcohol Licensing between 19 December 2012 and 21 March 2013, with the summary of responses being published on 11 October 2013 <http://www.scotland.gov.uk/Publications/2012/12/8130>. The consultation asked for views on twenty one different proposals, largely raised by stakeholders, and attracted over one hundred responses. On the basis of these responses officials have taken forward a variety of proposals balancing the different stakeholder interests and aims of the licensing regime: that it is clear and operates effectively; that it protects public health and that it prevents crime and disorder.

23. In addition to the proposals consulted on there was also significant support for removing the automatic requirement for a hearing where notified of a relevant or foreign offence. The Scottish Government has responded to these views by focussing on addressing existing concerns within the licensing regime and removing the automatic requirement for a hearing where notified of a relevant or foreign offence.

24. The responses made clear that people do not want to see a root and branch review of licensing legislation. The 2005 Act only came into force 4 years ago and the regime is still settling in. Many aspects of it are working well¹. However, there are areas that are not working as effectively as they should be. Therefore, rather than proposing radical overhauls of the regime, the Scottish Government has looked at these areas to find ways to improve the existing system.

Sexual entertainment venues

25. There has been a long history of attempts to improve regulation in this area. In 2005, the then Scottish Executive set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The Group made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the community.

26. A consultation on legislative proposals was conducted between April and September 2013 <http://www.scotland.gov.uk/Publications/2013/06/3607>. The consultation attracted a significant response, albeit 90% of the responders were near identical returns sent as part of an organised campaign of opposition to a licensing scheme. Whilst these responders did not identify the nature of their interests in sexual entertainment it can be inferred that it is likely that they either work in the industry or are customers.

27. Amongst the other responders (local authorities, Police Service of Scotland and violence against women and gender groups principally) there was wide support for the principle of a new licensing regime. Some concern was raised by some arts organisations about possible inadvertent impact on their activities.

Metal dealers

28. An initial consultation on a limited proposal to increase the number of metal dealers falling into the licensing regime was conducted between November 2011 and February 2012 <http://www.scotland.gov.uk/Publications/2013/04/5185>. This consultation concluded that a wider package of proposals was required. A further consultation was conducted between April and July 2013 and included many of the proposals that are now being taken forward within the Bill.

¹ [Monitoring and Evaluating Scotland's Alcohol Strategy Third Annual Report](#)

29. The consultation showed widespread support for a toughening of the licensing regime for metal dealers. This support derived from local authority regulators, the police and many of the organisations and businesses that find themselves regular victims of metal theft.

30. Dealers were for the most part accepting of the need for more effective regulation but were keen to ensure that their businesses were not damaged by excessive or inappropriate requirements.

Taxis and private hire cars

31. Since the end of 2011, officials have been reviewing information produced on the taxi and private hire car licensing regime to date and have had fresh discussions with stakeholders, including a public consultation which ran from 28 November 2012 to 15 March 2013 <http://www.scotland.gov.uk/Publications/2012/11/2484>. Sixty eight responses were received during the public consultation from a wide variety of interests including: trade, local licensing authorities, police, passenger groups, disability organisations, the Law Society of Scotland, the Information Commissioner's Office and the Office of Fair Trading. In addition, officials attended a number of meetings to discuss the consultation. Representatives at these meetings included, passenger groups (primarily focussed on passengers with disabilities) local authority officials with responsibility for licensing, police and trade (taxi, private hire and contract hire).

32. Proposals on extending testing to private hire car drivers gathered the most wide-spread support. The removal of the contract exemption was largely welcomed by the currently licensed trade, most local authorities and police. However, those working under the current contract exemption were concerned about the detail of how local licensing regimes would develop. The Scottish Government intends to delay commencement to prepare for a smooth transition for all those involved. Views on the introduction of a power to refuse private hire car licences on the basis of overprovision received a mixed response. In general, local licensing authorities which currently restrict taxi licenses were largely in favour while those who do not, were not in favour. However, the Bill will introduce a power for local licensing authorities to refuse an application, it will not require them to do so.

Miscellaneous and general

33. Discussions have taken place over a number of years with stakeholders regarding the implications for licensing of the European Services Directive. This Directive is transposed into UK legislation by the Provisions of Services Regulations 2009 and places requirements on how licensing schemes in the internal market should operate. These discussions with stakeholders have led these proposals which ensure compliance with the Directive and address matters such as electronic communications and the tacit authorisation of licences that are not dealt with promptly.

34. Discussions have been held with representatives of the arts groups most impacted by changes to theatre licensing regimes. The Scottish Government expects them to be generally welcoming of efforts to reduce disproportionate oversight.

35. Questions on the creation of the Civic Licensing Standards Officer (CLSO) role and the power to make regulations on hearings were included within the consultation on taxi and private hire car licensing. The CLSO proposal received support from a number of local authorities largely on the basis of the perceived success of the Licensing Standards Officer (LSO) model under alcohol licensing. Some concerns were raised in relation to resource and flexibility. The Scottish Government has taken account of these concerns in the drafting and provided local authorities with a great deal of discretion in how they meet the new requirement. The order making power to enable the Scottish Ministers to make regulations on the conduct of hearings under the 1982 Act was largely welcomed. It was felt this could bring advantages in terms of consistency in approach across licensing regimes and across licensing authorities.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

36. Information on these issues is provided in relation to each Part of the Bill. The Bill as a whole is expected to have a positive effect on the wellbeing of communities generally, including island communities. Its provisions do not have any adverse effect on human rights or sustainable development. Where the Scottish Government believes that a particular group will not be significantly affected, they have not been referred to in these sections.

BILL CONTENT

37. The Bill is structured in the following Parts:

Air weapons

38. Part 1 – sets out a new licensing system for air weapons administered by the Police Service of Scotland. This will better protect our communities by ensuring that only those people who have a legitimate reason for owning and using air weapons should have access to them and that those persons are properly licensed. Specific provisions include:

- meaning of air weapon;
- air weapon certificates;
- permits;
- approved air weapon clubs and recreational shooting facilities;
- commercial matters;
- enforcement;
- keeping air weapons secure;
- false statements;
- time limits for offences;
- appeals;
- fees;
- regulations;

- arrangements for existing certificate holders;
- guidance;
- exemptions.

Alcohol licensing

39. Part 2 – amends the system of alcohol licensing by:

- The creation of a new offence of supplying alcohol to children or young people for consumption in a public place. This fulfils a manifesto commitment;
- 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 Offenders 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 licence holder to notify a change in interested parties and removal 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 failing to undertake refresher training and other changes to the 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. This clarifies compliance with the EU Services Directive.

40. Part 3 - amends areas of the civic licensing regimes:

Sexual entertainment venues

- Creating a new licensing regime for sexual entertainment venues. Provisions will include:
 - The definition of sexual entertainment venues;
 - The power for local authorities to license sexual entertainment venues according to the existing structure set out in Schedule 2 to the 1982 Act;
 - The power for local authorities to determine the number of sexual entertainment venues in their area.

Metal dealers

- Metal Dealer provisions will strengthen the existing licensing regime. Specific provision will be made to:
 - Remove the exemption warrants system that allowed a metal dealer with a larger turnover to be exempt from the licensing and regulation of metal dealers;
 - Limit payment for metal by metal dealers or itinerant metal dealers to prescribed methods i.e. bank transfer or cheque. By removing the option of paying in cash it will be ensured that a metal thief is not attracted by the possibility of being paid in an anonymous fashion. Instead, transactions will be traceable and auditable;
 - Improve standards for identification of customers;
 - Improve standards of record keeping;
 - Remove mandatory requirement that metal dealers should not process metal for 48 hours after receiving it. It is felt that this step is impractical for many dealers and should not be a compulsory requirement (though local licensing could impose it case by case).

Taxis and private hire cars

- The provisions in the Bill are part of a larger body of work which aims to create greater consistency as well as widening and tightening the licensing regime. Specific provisions include:
 - The power to refuse to grant private hire car licences on grounds of overprovision;
 - The extension of taxi driver testing to include private hire car drivers;
 - Removal of the contract exemptions to the licensing and regulation of taxis and private hire cars, bringing hire cars used on contracts into the regime.

Public entertainment venues

- The Bill will abolish 'theatre licences' as currently required under the Theatres Act 1968 and instead regulate theatres through the existing public entertainment licensing regime provided for in the 1982 Act.

Miscellaneous and general

- The Bill will also include a number of provisions aimed at improving the operation of all civic government licensing regimes and clarifying compliance with the EU Services Directive. Specific provisions include:
 - Power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings;
 - Introduce a new role, Civic Licensing Standards Officer, with broadly the same powers and duties as an ‘authorised officer’ within the 1982 Act but with specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act;
 - Where it has not already been provided for, the deemed grant of a licence where the Local Authority has not either decided on an application or sought an extension from the sheriff within a set period. As with the similar provision in relation to alcohol, this provides clear compliance with the EU Services Directive.
41. Part 4 – makes supplementary and final provisions.

PART 1 – AIR WEAPONS

Overview

42. The Scottish Government has long campaigned for the UK Government to review all firearms legislation, or to devolve responsibility for firearms legislation to the Scottish Parliament so that Scottish needs can be at the forefront of a distinct Scottish approach to regulating firearms within our communities. In particular, Ministers are committed to introducing a robust system of air weapon licensing. This will better protect our communities by taking these potentially lethal weapons out of the hands of those who would misuse them. Following a recommendation by the Calman Commission in 2009, these powers on air weapons were transferred via the Scotland Act 2012.

43. The history and complexity of existing firearms legislation, and the fact that there are numerous anomalies in the current law – for example, differences between licensing requirements for firearms and shotguns – leads to some complex issues for air weapons. The Scottish Government has sought to set out a licensing regime which is appropriate, recognisable and practicable both for the police, who will be the licensing authority, and for those in the legitimate shooting community.

Background

44. There are estimated to be approximately 500,000 air weapons currently in circulation in Scotland. This number was arrived at with the aid of the Gun Trade Association and other stakeholders, and was approved in discussion with the SFCP.

45. Recorded offences involving firearms in Scotland fell by 32 per cent, from 535 in 2011/12 to 365 in 2012/13. This represents the lowest total recorded in Scotland since comparable records began in 1980. Air weapons offences also fell in the same period, although at 47 per cent they accounted for almost half of all incidents in 2012/13, a rise of 10 per cent on the previous year's figure.

Policy Proposals

46. The overarching policy objective of this part of the Bill is not to ban air weapons, but to ensure that only those people who have a legitimate reason for owning and using an air weapon should have access to them and that such persons are properly licensed. The principles underpinning the system are:

- Clearly define the air weapons to be subject to licensing;
- Broadly follow the principles and practices of existing firearms legislation;
- Set out the main principles of the Scottish regime in primary legislation, with detailed provisions – for example, on fees, procedures, forms, conditions, etc. – being provided for in future secondary legislation supported by detailed guidance;
- Enable a fit person to obtain a licence to own, possess and shoot an air weapon in a regulated way, without compromising public safety;
- Prevent those persons who are unfit, or who have no legitimate reason for holding an air weapon from obtaining a licence;
- Have as its objective the removal of unwanted, unused or forgotten air weapons from circulation;
- Ensure appropriate enforcement of the new regime with suitable offences and penalties available within our justice system to deal with any person who contravenes the new regime.

Defining air weapons and what is covered

47. Section 1 of Part 1 of the Bill provides a clear statement of the types of air weapon which will be covered by the licensing regime, by defining the lower and upper power limits of the weapons themselves. The regime applies to all air weapons which, when fired, are capable of developing a muzzle energy between 1 joule (0.737 ft.lbs.) and 6 ft.lbs for air pistols or 12 ft.lbs for other air guns. Weapons below the 1 joule limit are not generally considered to be lethal (the Home Office Firearms Consultative Committee agreed in 2002 that 1 joule was the minimum threshold at which a firearm could be considered lethal – <http://www.official-documents.gov.uk/document/hc0102/hc05/0501/0501.pdf>), while the upper levels are set by the Firearms Act 1968, which remains reserved to Westminster. Air weapons above the upper energy level, those disguised as other objects such as a walking stick, are designated under existing Rules as “specially dangerous” and their regulation remains reserved to the UK Parliament. By linking the definition in the Bill to the 1968 Act the Scottish Government ensures that, should the UK Government ever change the upper power levels, no gap opens up between the licensing regimes of the Bill and the Firearms Act 1968 to allow a person to have an air weapon without a licence of some sort.

The requirement for an air weapon certificate

48. The fundamental requirement of the Bill is set out in section 2 and will require a person over 14 years of age to apply for and obtain a licence should they wish to possess, purchase or acquire and/or to use an air weapon in Scotland. A person under 14 years of age may shoot air weapons in suitable circumstances if appropriately supervised, but they may not hold a certificate in their own right. A person will commit an offence if they do not have a certificate and are not subject to an exemption, as set out in the schedule to the Bill. The Bill will impose the licensing requirement on the individual or person involved, with appropriate background checks being made, rather than seek to license individual weapons. Air weapons are not generally identified individually, for example by serial number or other mark, and it would therefore be impracticable to control their movements under a licensing scheme.

49. The offence of using, possessing, purchasing or acquiring a weapon without a certificate is not expected to be commenced until some time after the licensing provisions of Part 1, to allow for a hand-in period. During that period unwanted weapons can be handed in to the police, or otherwise disposed of, for example by sale (since such weapons will remain able to be sold within and outside the UK and therefore will continue to have market value). The interim period between commencement of the licensing provisions and the offence will be used to ensure as many people as possible are aware of and have the opportunity to comply with the new regime in relation to air weapons.

Certificates for people aged 14 to 17

50. A lower age limit of 14 was selected because it is broadly consistent with existing firearms legislation. This is the minimum age, for example, where a young person can shoot an air weapon on private land unsupervised under existing UK legislation (section 23 of the Firearms Act 1968). It is also the minimum age for the grant of a section 1 firearms certificate. The Scottish Government therefore consider this is a suitable age to obtain a certificate.

51. There is currently no minimum age for the grant of a shotgun certificate, although you must be aged 18 or over to purchase a shotgun and anyone aged 14 or younger must be supervised by someone aged 21 or over to be in possession of an assembled shotgun in a public place. The Scottish Government believes that the lack of a minimum age limit for shotgun certificates is an anachronism of the existing UK firearms legislation which should not be replicated in the air weapon licensing regime.

52. More generally, the Scottish Government is committed to ensuring that the use of air weapons by young people is properly and closely regulated. Consistently, more than 45% of recorded crimes and offences involving air weapons are committed by persons aged 20 and under. Similarly, over 50% of those victims injured in offences in which a firearm was alleged to have been fired were aged 20 or under in each of the past three years. (Source: Recorded Crimes and Offences Involving Firearms, Scotland, 2012-13).

53. Specific provisions are made in the Bill, therefore, which set particular requirements and conditions around the types of shooting which may be undertaken by certificate holders of 14 to 17 years of age. Section 7, for example, requires that any application by a young person must be counter-signed by a parent or guardian, and that the certificate should specify the type(s) of

shooting which that person may undertake. These include target shooting on suitable private land or at an approved club, pest control or the protection of crops or livestock, and for participation in events and competitions. In line with existing legislation on firearms, the Scottish Government believes that the purchase and ownership of air weapons should continue to be restricted to those aged 18 and over.

54. The Scottish Government believes that these requirements and conditions strike a suitable balance between the need to control shooting by young people, and recognising the traditions of shooting and the need to allow young people to shoot in the right circumstances. Consequently, these requirements are mirrored in other provisions of the Bill which relate to young people including, for example, provisions around the need for visitors to Scotland to hold a temporary permit.

Applying for and granting a certificate

55. The Bill makes provision, at sections 3 to 5 and elsewhere, for the processes involved in applying for an air weapon certificate, and for verifying and granting or refusing such a certificate. In line with the existing firearms licensing regime, the licensing functions for air weapons will be carried out by the Police Service of Scotland. As with other firearms and shotguns, the Chief Constable will keep a register of all applicants, in order to maintain a long term record of applications made and of any information relevant to the grant or refusal of the application. This will allow the Police Service of Scotland to ensure that decisions are taken on the best available information, to maintain consistency and protect public safety. Detailed provisions around these processes will be subject to further discussions with stakeholders, including the Police Service of Scotland, and will be set out in secondary legislation. The Scottish Government's aim is to mirror, where appropriate, existing procedures, records and forms used under the Firearms Act 1968. This allows for a familiar system for both the police and for existing certificate holders, minimising the impact of the new regime.

56. The tests for grant or renewal of an air weapon certificate are broadly in line with those for more powerful weapons under section 1 of the Firearms Act 1968: it may be granted where the Chief Constable is satisfied that the applicant is fit to be entrusted with an air weapon, is not prohibited from possessing an air weapon, has a good reason for having it his possession, or for using, purchasing or acquiring an air weapon, and can be permitted to have an air weapon in his possession without danger to public safety or the peace. The Scottish Government believe that these are the appropriate checks for requests to obtain an air weapon licence.

57. To avoid unnecessary duplication of effort, the police may accept that the first two of these criteria have been met if the applicant is already in possession of a firearm and/ or shotgun certificate. This should help alleviate the amount of work done by the police on checks which have already been undertaken, and reduces the costs of the application or renewal process both to the police and to the applicant.

58. The Chief Constable is not required to grant a certificate even if all criteria are met, but the tests are sufficiently stringent that the Scottish Government would expect the Chief Constable would exercise discretion to grant/renew if the criteria are met. Refusals can be appealed to the Sheriff.

59. Certificates will, unless revoked or cancelled, normally last for a period of 5 years. Applicants who also hold a firearms or shotgun certificate may, however, apply for a co-terminous air weapons certificate, allowing for greater convenience to themselves, and allowing the police to conduct all processes at the same time. Fees for a co-terminous application would therefore be reduced. Special provision is made for young people whose certificate will, by definition, be of shorter duration (a maximum of 4 years) as it will only apply between 14 and 17 inclusive. It will therefore expire on the attainment of 18 years of age. The holder will then be eligible to apply for a full certificate.

60. As part of the process of determining an application, the police will be able to visit an applicant's home or other places where the weapons may be used or stored. This will ensure that any concerns the police may have about the safety of the location where shooting is to take place can be checked. In practice, the Scottish Government believes that such checks should only be required in a small number of cases, provided that other considerations can be satisfied.

Applying conditions to a certificate

61. Each licence which is granted, varied or renewed should be subject to a set of mandatory conditions which will be prescribed by the Scottish Ministers in subordinate legislation. The Government does not intend this to be a long list, but would include standard requirements such as the need to keep air weapons securely when not in use, and the need to inform the Chief Constable of a change of address or other circumstances.

62. In addition, and in line with existing firearms legislation, the Chief Constable will be able to impose further conditions at the time of grant, renewal or variation. Guidance on the imposition of conditions, including standard wording for common conditions, for example relating to target shooting or pest control, or around the suitability of land on which to shoot, will be prepared and published by the Scottish Government, in consultation with other stakeholders. The Chief Constable will also be able to vary or revoke any condition or to impose a new one at any time if deemed necessary or appropriate.

63. As with other aspects of the licensing regime, a person will be able to appeal to the Sheriff with regard to the imposition of or changes to conditions.

64. One of the primary aims of the licensing regime is to prevent the use of air weapons in unsuitable or unsafe areas, or where their use may cause concern or alarm. Such areas may include the use of air weapons for "plinking" in gardens or other urban or highly populated settings. The Scottish Government accepts that this has been a common pastime for many, and is seen as an "entry level" for many young shooters who go on to take up the sport on a more regular, organised basis. However, the Scottish Government has a wider responsibility to the community to reduce alarm and protect public safety. Against this background, Ministers do not believe that target shooting in such an environment should generally be acceptable unless the applicant can satisfy the Chief Constable as to the safety and other arrangements in place to ensure that shooting can be carried out without risk to the public. Shooting at properly operated and approved air weapon clubs will be encouraged as a matter of policy, and specific provision is made in the Bill to approve air weapons clubs in future.

Variation of air weapon certificate

65. The Bill allows for the details on a certificate to be varied. This may be necessary where a certificate holder moves house, where they wish to change or add to the uses for their air weapons, or where other circumstances change. If a condition has been placed on the certificate by the Chief Constable then it should be possible to apply to have that condition removed or amended by an application for a variation. Similarly, the Chief Constable may vary a certificate as he sees fit.

Revocation of air weapon certificate

66. The Bill includes provisions to revoke an air weapons certificate so that anyone who is misusing, or likely to misuse an air weapon, can be prevented from doing so. It also ensures that anyone who becomes unfit to possess an air weapon can have it taken from them. The Chief Constable would issue a revocation notice to the certificate holder.

67. Revocation is to occur at least 7 days from the date of issue of the notice and the notice must specify that. However, the notice must also require the holder to surrender any air weapons in the holder's possession and the air weapon certificate within a specified date – which can be sooner than the date specified on the revocation notice. The Scottish Government believes that it would not be appropriate for the Chief Constable to have to wait 7 days before seeking surrender of any air weapons if he believed that this could compromise public safety. Any revocation will be subject to appeal and, if that appeal is successful, the holder will get their certificate and air weapon returned. Where a certificate holder has his certificate revoked, provision is made to allow the holder to reach agreement with the Chief Constable on the disposal of the weapons. This will allow the certificate holder to realise the value of the air weapons, should they wish to sell them or make similar disposal arrangements.

Permits

68. The Scottish Government acknowledges that there is a limited range of circumstances where a person may need to possess or otherwise deal with air weapons on a temporary basis without being a certificate holder. In line with existing firearms legislation, the Bill makes provision for such circumstances.

69. Under section 12 of the Bill a police permit may be granted by the Chief Constable for transient situations such as executors or trustees in sequestration etc. who find themselves in possession of air weapons, or to allow the removal of an air weapon from a ship, or their sale by an auctioneer. A police permit will permit a person to possess or acquire an air weapon without an air weapon certificate, as the Chief Constable sees fit. It should not allow use of an air weapon. Permits issued to auctioneers will also allow them to sell an air weapon without being a Registered Firearms Dealer.

70. Sections 13 and 14 make provision for temporary visitor permits for those who wish to come to Scotland to shoot air weapons, either their own or those borrowed or hired while in the country. Such certificates will be time limited and will last no longer than 12 months. The Chief Constable may grant a permit to the applicant only if satisfied that it would not present a danger to public safety or the peace and that the visitor is not prohibited from possessing one. This approach should introduce a simple, pragmatic regime which is transparent to those coming to

Scotland with air weapons, while providing an appropriate level of control about their movement and use in Scotland.

71. As with full air weapons certificates, the Bill makes provision with regard to both mandatory and discretionary conditions which can be attached to a permit, and for their variation or revocation where appropriate.

72. Section 17 provides for a specific type of permit so that, where the Chief Constable has approved the time and place of an event, an individual may borrow, hire, use and possess an air weapon at that event without requiring to hold an air weapon certificate. The intention is that people attending organised events, e.g. a fair or local gala, pony club tetrathlon or bicycle biathlon may compete without necessarily requiring an air weapon certificate. Guidance will set out how and when the Chief Constable should exercise the discretion to approve. In order that individuals may know whether the Chief Constable has approved the event the person who has requested approval of the event must display the approval prominently so that those who may possess an air weapon at it are aware that they may so possess without an air weapon certificate.

Approval of air weapon clubs

73. The Scottish Government considers that properly operated air weapons clubs can provide a suitable, safe environment which air weapons users, for example target and hobby shooters, should be encouraged to attend. The Bill makes provision which allows such clubs to apply for a formal approval from the Chief Constable, similar to approvals for rifle clubs under the existing legislation. People who wish to join such clubs, and to possess or use air weapons at the club may do so without holding their own certificate. This is one of the exemptions from the general requirement for a certificate, set out in schedule 1 to the Bill. Detailed guidance will set out the security and other considerations which should be considered by the Chief Constable in processing an application for approval.

74. An air weapon club licence may be varied on the application of the club or by the Chief Constable, to reflect changed circumstances, and will expire, unless revoked earlier, after 6 years. This matches the duration of rifle club approvals under the Firearms (Amendment) Act 1988, thereby creating a familiar regulatory system for clubs. The Bill also makes provision for an air weapon club approval to be granted co-terminously with that of an existing approved rifle club. This is designed to make things easier for both clubs and the Police Service of Scotland so that approvals can be arranged for renewal all at the same time.

75. Under section 22 the Police Service of Scotland will be able to enter any approved air weapon club premises and inspect them and anything in them but only for the purposes of ascertaining compliance with their approval or the wider terms of the Bill. This includes information in electronic form. Only an officer of the rank of inspector or above may grant an authorisation. The power to enter and inspect may normally only be exercised during reasonable times of the day, for example when the club is operating. The constable or police staff member must produce the authorisation if asked. An offence will be committed if any person intentionally obstructs a constable or member of police staff in the exercise of these powers.

76. These enforcement powers reflect existing powers in respect of approved rifle clubs while also updating them and the Scottish Government consider this to be the correct approach

for air weapon clubs. Separately, as a single club may well have both types of approval and the difference between a section 1 air weapon and an air weapon subject to the Bill is not easily discernible, the Scottish Government thinks there is sense in having complementary inspection powers for approved air weapon clubs.

Recreational shooting facilities

77. A person who operates a recreational shooting facility, such as a Paintball venue or miniature rifle range, where individuals who do not hold certificates use air weapons, must hold an air weapon certificate and have it on display. This will ensure that a suitable, identified person is responsible for the possession, security and use of the air weapons at the facility. That person would be subject to the normal process for determining an air weapons certificate application.

Restrictions on transactions involving air weapons

78. The Scottish Government strongly believes that the commercial manufacture, sale, repair and testing of air weapons should be properly regulated, in line with other controls being introduced over air weapons in Scotland, to ensure that the public at large are protected from the misuse of air weapons. Provisions at sections 24 to 26 of the Bill therefore govern commercial transactions in air weapons.

79. Any person who by way of trade or business manufactures, sells, transfers, repairs or tests an air weapon or who exposes one for sale or transfer, or who possesses one to repair or test must therefore be a Registered Firearms Dealer under the Firearms Act 1968. This is broadly in line with present provisions around commercial transactions, although adds manufacture, test and repair of air weapons to the list of commercial activities restricted to Registered Firearms Dealers. The Scottish Government believes that this provides a proper regime under which to deal in air weapons for the future.

80. It will be an offence to sell or transfer to any person, other than a Registered Firearms Dealer, any air weapon unless the person it is being sold or transferred to produces a valid air weapon certificate or shows that they are otherwise entitled to purchase or acquire it without holding an air weapon certificate. It will be an offence to provide a false certificate or statement.

81. The Bill also requires that sales of air weapons are carried out face-to-face. It replicates the current requirements of section 32 of the Violent Crime Reduction Act 2006. The Scottish Government considers that this provides a reasonable level of control and check on commercial transactions, with checks to ensure that the individual buyer holds a valid air weapon certificate, where necessary.

82. The Scottish Government does not wish to undermine proper trade in air weapons, and acknowledges the importance of sales of such weapons to people from outwith Scotland. Section 26 of the Bill enables a person to purchase an air weapon from a Registered Firearms Dealer in Scotland if the air weapon is purchased for delivery outside Great Britain without first coming into the purchaser's possession. As with existing firearms and shotgun sales of this kind, a Registered Firearms Dealer who sells an air weapon to someone so entitled to purchase must send a notice to the Chief Constable of the transaction within 48 hours.

Enforcement

83. The Bill includes a number of detailed provisions to allow for the robust and effective enforcement of the new licensing regime for air weapons. This includes provisions (at section 27) for a sheriff to grant a warrant for a constable or member of police staff to enter and search premises, or persons found there where it suspected that an offence has been, is being, or is about to be, committed or that in connection with an air weapon there is a danger to public safety or to the peace, and to seize and detain anything which may be found on the premises or any person there.. This includes information in electronic form. These enforcement powers largely mirror existing powers for firearms and shotguns. Section 28 provides the power for a constable to require any person to present their air weapon certificate for inspection. Failure to produce a certificate or to permit the constable to read it or to show entitlement to have the air weapon without holding a certificate will allow the constable to seize and detain the air weapon. The Scottish Government considers that this provision will help to take illegally held air weapons off the streets, helping to protect public safety.

84. Provision is also made to give a court the discretion to cancel any air weapon certificate held by the person on conviction of certain offences or breach of orders, or to order the forfeiture and disposal of any weapon found in the possession of the offender, or disposal if the weapon has already been seized by the Police Service of Scotland. This gives courts the power to remove air weapons from those the courts do not think should have them. Specific provision is made for museums because the Scottish Government do not want air weapons which are museum exhibits to be forfeited just because they have been taken or used unlawfully. In such cases it is appropriate that the museum gets the exhibit returned to it.

Keeping air weapons secure

85. The Bill requires any person to take reasonable precautions for the safe custody of any air weapon which they have in their possession, and to report immediately to the Chief Constable the loss or theft of any such air weapon then they commit an offence. This provision seeks to keep air weapons in safe control at all times and ensure that steps can be taken to track them down if lost or stolen. Guidance will be prepared by the Scottish Government and will include advice on appropriate security for the keeping and storage of air weapons. This will build on existing good practice promoted by the gun trade and shooting organisations.

False statements, certificates and permits

86. Where a person knowingly makes a statement with a view to procuring an air weapon certificate, or police, visitor, or event permit which is false in any material detail, or uses a certificate they know to be false, then they commit an offence. This will help to guard against fraudulent applications and purchases.

Time limit for offences

87. Summary proceedings must ordinarily be instituted within six months after an offence is committed but, under section 33, for air weapon offences under the Bill they may be instituted at any time within three years of the offence. This is to ensure that summary offences which come to light sometime after commission can still be tried. The Firearms Act 1968 makes equivalent provision in relation to offences under that Act, albeit for four years.

Offences by bodies corporate etc.

88. Section 34 relates to offences by corporate bodies. It is intended to deal with the few cases where there may be an offence committed by a non-natural person such as a company, partnership or unincorporated association (e.g. an auctioneer, carrier firm owner of a recreational shooting facility etc.). Where the offence is committed by an officer of the body with that officer's consent or connivance then this section allows the officer to be prosecuted as well as the body. The aim is to ensure that corporate status does not allow individuals to escape liability where it would otherwise fall on them.

Appeals

89. As noted earlier in this Memorandum, the Bill makes provision for appeals against the decision of the Chief Constable in a number of instances. Any appeal will be to a sheriff who will consider any evidence or other matter whether or not it was available when the Chief Constable took the decision in question. The sheriff with jurisdiction is to be the one for the area in which the appellant resides. Where a person resides outside of Scotland the sheriff at Edinburgh is to have jurisdiction. This is necessary because a certificate holder may not reside in Scotland but will need to know which court to appeal to against a relevant decision of the Chief Constable. An appeal is to be brought no later than 21 days after the date of the decision was received by the appellant.

90. The sheriff may dismiss the appeal or give the Chief Constable such direction as he thinks fit. The decision of the sheriff may only be appealed on point of law, ultimately to the Inner House of the Court of Session. The Courts Reform (Scotland) Bill proposes changes to the sheriff court system and the policy in this Bill has been formulated so as to ensure that any changes which may arise out of that one do not affect these appeal provisions.

91. These processes ensure that a fair and open system is in place and that the administrative discretion of the Chief Constable is overseen by a fully independent and impartial judicial authority with full fact and law review.

Fees

92. Firearms licensing is a service provided by the Police Service of Scotland and comes at a cost in terms of processing the application itself, carrying out background checks and home visits, issuing certificates, monitoring existing certificate holders and prosecuting those who contravene the law.

93. As such, it is right that the process for obtaining a certificate should incur a fee. Under the current firearms regime, fees are generally only charged on issue of a firearms or shotgun certificate following a successful application. The Scottish Government believes, however, that it is more appropriate to charge applicants regardless of the outcome of their application as costs are incurred considering unsuccessful applications as well as successful ones. This better reflects the costs of providing the service overall and is in line with comparable processes.

94. The Scottish Government considers that existing fees for firearms and shotguns certificates are very low and has pressed the Home Office to raise these on a regular basis. The existing tariff has been in place since 2001 and does not reflect the cost of providing the service.

Under the present tariff, for example, it costs just £50 for a five year firearms licence. In addition, the Scottish Government believes that the present levels of fees do not reflect the responsibility or safety implications of possessing and using a potentially dangerous weapon. The Scottish Government will, along with a number of other stakeholders, continue to press for significantly increased fees under the firearms legislation.

95. In the meantime, it is acknowledged that it would be inequitable to set an initial air weapons fee tariff at a higher level than those for more powerful weapons. Such a move could, for example, encourage people to move towards the ownership and use of higher powered guns, with implications for safe shooting and public safety more generally. The Scottish Government's overarching policy in this area is, however, to move towards a full cost recovery model for fees, for air weapons and other types of firearm. Against this background, illustrative fee levels are set out and discussed in the Financial Memorandum which accompanies the Bill.

96. The scale of fees will be set out in subordinate legislation. Fees will be set for different circumstances and in relation to visitor permits and any other licensing activity under the Bill.

Power to make further provision

97. Section 37 of the Bill provides for the Scottish Ministers to make regulations on conditions, application forms and documents to be submitted for permits and licences. The intention here is to provide flexibility in the regime by allowing process changes to be done quickly through subordinate legislation. This is a wide power and it is intended that it will enable a single set of regulations to be made for the processes underpinning the regime (other than fees, which will be in separate regulations to permit Parliamentary consideration of that issue in isolation).

Transitional arrangements for existing certificate holders

98. Those who have an existing firearms and/ or shotgun licence that are already in possession of an air weapon, will not be required to obtain an air weapon certificate to continue possessing or using their air weapon until their existing licence expires (the later expiry date takes precedence if both a firearm and shotgun are held). They will, however, still be required to adhere to any mandatory conditions and will be committing an offence if they fail to do so. The cancellation of one or both existing certificates ends the transitional period.

99. An existing certificate holder who wishes to acquire a new air weapon during this transitional period will be required to apply for and obtain an air weapon certificate prior to the purchase or other acquisition. This will ensure that the seller can check that the person holds a valid certificate, simplifying the process in particular for Registered Firearms Dealers.

100. These provisions are designed to assist in the smoothing process in dealing with the influx of new applications. Tests will already have been carried out in relation to persons who have existing certificates and this will avoid duplication of effort.

Guidance

101. Just as with the extant Home Office Guidance Guide on Firearms Licensing Law around the Firearms Acts, the Scottish Ministers will publish guidance on this Part of the Bill. This guidance will be prepared by the Scottish Government working closely with the Police Service of Scotland and other stakeholders. It will have to be taken into account by the Chief Constable when exercising functions conferred by the Bill. That is important as there is considerable discretion conferred on the Chief Constable and guidance will ensure that the discretion is exercised consistently with Ministers' vision. Guidance may also be issued more generally about anything to do with the Part and can provide the Scottish Ministers' view on how the Bill should operate in practice so that all stakeholders understand the operational model.

Exemptions

102. There will be a category of exemptions in relation to situations where no certificate is necessary to possess, use, purchase or acquire an air weapon. The Scottish Ministers will be able to amend exemptions to react to changes in circumstances around licensing. Schedule 1 sets out these exemptions.

103. Certain public servants are exempted in their capacity as such. This includes the police as well as other public servants who could come into contact with air weapons as part of their duties. The list is able to be adjusted by the power in section 2 of the Bill should other public servants need to be included or any removed. The approach taken in the Firearms Act 1968 relies on the rule of law whereby Acts do not bind the Crown unless and to the extent that they so provide. The Interpretation and Legislative Reform (Scotland) Act 2010 reverses that position so that Acts of the Scottish Parliament bind the Crown unless and to the extent of any exemption. The Scottish Government thinks that a narrow list of exempted public servants is appropriate as a blanket one would result in unduly broad exemption.

Minor and consequential amendments

104. Schedule 2 to the Bill lists the minor and consequential amendments as a consequence of the Bill.

Alternative approaches

105. Stricter control over and licensing of air weapons has been a long-standing commitment for the Scottish Government. This was a clear Manifesto commitment in advance of both the 2007 and 2011 elections to the Scottish Parliament. The Scottish Government considers licensing of such weapons is the most appropriate way of improving public safety and reducing the potential for harm within our communities. With this principle clearly established, the Scottish Government's consultation on this issue did not seek debate on the principle. Instead, views and contributions were invited on how best to implement a robust, proportionate and practicable system of licensing. Nevertheless, a number of alternative approaches were available in principle.

106. The first alternative option is to do nothing. As noted above, this is not considered a viable option and would not meet the Scottish Government's aim of introducing stricter controls over the availability and use of air weapons. Although a significant number of air weapons

stakeholders do not consider it necessary to license air weapons, the tragic consequences that airgun misuse can have in our communities means that the Scottish Government cannot stand back and do nothing.

107. The second option would be to provide widespread training to air weapon users, which is the approach supported by many sections of the shooting community and raised in responses to the public consultation. Under such arrangements, the Scottish Government would roll out training across the country. However, such an approach would appeal most to those who already use airguns safely and with good reason. It seems unlikely that individuals who misuse airguns would engage with a training programme. Nor would it help to identify the estimated large number of unused and forgotten air weapons which the Scottish Government seeks to remove from circulation.

108. The third alternative would be to continue to press for full devolution of firearms legislation, and to frame the licensing of air weapons in the context of fully revised legislation on all firearms. While it would be easier and more coherent to update all firearms legislation in one all-encompassing Act, the UK Government continues to resist further devolution and the Scottish Government does not consider that it is prudent to wait for that uncertain outcome when powers exist to regulate these weapons now.

109. A fourth alternative is to introduce a minimal registration scheme with no approval process, simply registering at a location such as a post office. Although this would entail minimal disruption and cost, it would essentially mean everyone could automatically obtain authorisation and would do very little to prevent misuse. It would allow everyone who has registered to hold air weapons regardless of their fitness to do so, and their intentions in using the weapons.

110. A fifth alternative option is to have a complete ban on air weapons in Scotland. Although there was some support in the responses to the consultation exercise for this course of action, the Scottish Government does not consider this to be a proportionate response to the issue of air weapons misuse, and would be unfair to the many legitimate shooters who currently use air weapons safely and may continue to do so under a licensing regime. Those who do misuse such weapons may be likely to ignore such a ban. In addition, there is the potential unintended consequence that those who currently shoot air weapons within the law may decide to continue shooting with other weapons, including shotguns and more powerful firearms.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc. of the air weapons provisions in the Bill

Equal opportunities

111. An Equality Impact Assessment (EQIA) has been carried out and the results will be published on the Scottish Government website at:
<http://www.scotland.gov.uk/Publications/Recent>.

112. In relation to the licensing of air weapons, the Scottish Government considers that the Bill does not discriminate on the basis of maternity and pregnancy, marriage and civil partnership, gender reassignment, race, disability, religion and belief, sex or sexual orientation.

Specific provisions are made with regard to young people, allowing those aged 14 to 17 to possess and use air weapons under certain conditions, and requiring the use of air weapons by anyone under 14 to be supervised by an appropriate adult. The Scottish Government considers these restrictions to be justifiable and proportionate in order to help protect young people, who are disproportionately the victims of gun crime, and reduce firearms offences committed by young people, while enabling them to shoot air weapons in a safe and properly regulated manner.

113. The age limits proposed in the Bill are consistent with current (unlicensed) airgun age limits, and provisions in Northern Ireland. These take into account risks to public safety.

Human rights

114. The Scottish Government considers that the Bill has limited impact on the human rights of individuals. Although current gun users may believe that their human rights are infringed by the introduction of a licensing system, the ownership and use of air weapons will still be permitted if the conditions set out in the legislation are met. There is no ban so no deprivation of property and the weapons retain market value by virtue of still being capable of being lawfully held and sold and the presence of an open market in England and Wales as well as the rest of the world. While the Chief Constable has considerable discretion in the performance of functions in relation to air weapons, that discretion is subject to a fully Article 6 compliant appeal mechanism. Any deprivation of property occurring in relation to cancellation of certificates and forfeiture occurs only temporarily in those narrow situations where it is necessary to do so to protect public safety and affected individuals can appeal to the court about the deprivation. The Bill does not discriminate against individuals and the policy has been carefully formulated to balance the rights of the individual with the safety of the wider populace.

Rural/island communities

115. During the consultation process many respondents raised concerns that air weapon licensing would be disproportionately restrictive on rural and island communities, with air weapon misuse seen as a distinctly urban problem. While misuse can take place anywhere, the Scottish Government has been clear that one of the main objectives of licensing is the removal of unnecessary air weapons from the urban environment, and the Scottish Government recognise that these weapons can be important tools in many aspects of rural life.

116. Essential rural activities such as pest control and protection of crops and livestock will be considered good reasons to be granted an air weapon certificate, provided that the other application criteria are met. Individuals in rural and island communities are also more likely than their urban counterparts to have access to suitable land for safe shooting, whether that shooting is in connection with business or leisure. The Scottish Government therefore does not consider that licensing will be unduly restrictive for rural or island communities.

Local government

117. The Bill has no direct impact on local authorities in discharging their duties.

Sustainable development and environmental issues

118. The Scottish Government do not anticipate that the Bill will have any negative impacts on sustainable development or environmental issues. Legitimate gamekeepers, pest controllers and the like – including more casual shooters who, for example, help to keep rabbit populations down on local farmland – will be able to apply for a certificate and continue their work with minimal impact.

119. In the case of larger wildlife – such as swans or foxes – which can often be the target of air weapon misuse, licensing will help to protect such creatures by preventing those who would commit such crimes from accessing an air weapon in the first place.

PART 2 – ALCOHOL LICENSING

120. Alcohol licensing, along with Minimum Unit Pricing and NHS investment in prevention, treatment and support measures, is part of the broader Scottish Government Strategy “Changing Scotland’s Relationship with Alcohol” (2009). There are significant social and financial costs associated with problem drinking. It has been estimated that alcohol misuse costs the Scottish economy around £3.6 billion every year particularly in terms of alcohol related crime, mortality and hospital admissions. It is vital that the police and Licensing Boards have the powers they need to reduce crime and preserve public order so that people can lead productive lives within safe and secure communities.

121. Alcohol licensing is not, however intended to prohibit responsible consumption nor to undermine the economic interests of the alcohol trade.

122. The Bill will improve the effectiveness of the alcohol licensing regime set out in the 2005 Act as added to by the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc. (Scotland) Act 2010, the Alcohol (Minimum Pricing) (Scotland) Act 2012, as well as secondary legislation.

123. There are a number of substantive provisions within the Bill and these have been arranged here under the following themes:

- Reducing crime and preserving public order and safety;
- Providing Boards with powers to consider a broader range of information;
- Advancing public health;
- Improvements to the existing system and reducing burdens on trade and Licensing Boards.

REDUCE CRIME AND PRESERVE PUBLIC ORDER AND SAFETY

Policy objective

124. It is vital that police and Licensing Boards have the powers they need to reduce crime and preserve public order so that people can lead productive lives within safe and secure

communities. Within this Bill there are a range of provisions to help ensure that people live their lives safe from crime, disorder and danger. These measures include:-

- Creation of new offences of supplying alcohol to children or young people for consumption in a public place.
- Providing Boards with powers to consider a broader range of information such as;
 - a fit and proper test;
 - spent convictions;
 - connected persons.

Supply of alcohol to a child or young person

125. Under the current licensing regime, adults can legally supply alcohol to someone under the age of 18 outwith a licensed premises. This facilitates outdoor drinking dens of young people where those in the group who are over 18 buy alcohol for younger members. The measures within the Bill will close this loophole and give the police the powers they need to disrupt these drinking dens.

126. The police are currently able to confiscate alcohol from children and young people drinking in public places, as well as from adults who are supplying alcohol to children and young people for consumption in public places. They describe this approach as ‘putting out the fire by removing the fuel’. During these campaigns, the former Strathclyde Police Force found the majority of outdoor drinking dens consisted of small clusters of people ranging in ages from 14 to 21. In many cases, those over 18 were the suppliers of alcohol to those under 18.

127. When Strathclyde Police confiscated alcohol from children and young people in public places they found that they were powerless to stop those over 18 simply buying and sharing more alcohol. It is not, in itself, against the criminal law to give alcohol to someone under 18 for consumption in a public place, although it is an offence to buy alcohol for those under the age of 18. Consequently there is a continuing cycle of confiscation and purchasing.

128. There are existing offences under the 2005 Act, see section 105 that cover buying alcohol on behalf of a child or young person or for consumption on licensed premises. Local byelaws, set by local authorities, can also make it an offence to drink in public, however these do not apply across all of Scotland and they operate differently in different areas.

129. The Scottish Government believes that the law should make it illegal to supply alcohol to a person under 18 both inside and outside of a licensed premises. In the Bill this is achieved by making it an offence for a person other than a child or young person to buy or attempt to buy alcohol for a child or young person for consumption in a public place.

Consultation

130. In the Scottish Government consultation on Further Options for Alcohol Licensing, this proposal attracted overwhelming support. Out of the 100 responses to this question, 94 were in

favour of making it illegal for adults to supply alcohol to an under 18 for consumption in a public place.

Alternative approaches

131. Various alternative approaches to establishing this offence were considered. Numerous definitions of what constitutes a ‘public place’ were considered as well as alternative drafting of the offence itself. The approach taken was considered to be the most proportionate and workable offence as well as the most effective at tackling the problem of drinking dens.

PROVIDING BOARDS WITH POWERS TO CONSIDER A BROADER RANGE OF INFORMATION

Policy objective

132. The Bill provides Licensing Boards with powers to consider a broader range of information when making decisions regarding the alcohol licensing regime. These additional powers help Boards to protect the public by ensuring that only appropriate persons can gain a personal or premises licence. To this end, the Bill expands the remit of what Boards may consider by taking forward provisions to:

- introduce a ‘fit and proper’ test;
- allow Boards to consider spent convictions.

The ‘fit and proper’ test

133. Many licensing regimes rely on a ‘fit and proper’ test to determine whether someone is suitable to hold a licence. However, the ‘fit and proper’ test that applied under the Licensing (Scotland) Act 1976 was not included in the 2005 Act. Instead, the 2005 Act focused on the use of relevant offences and foreign offences to assess the suitability of candidates and licence holders, as well as providing the ability for people to object based on matters connected to the licensing objectives.

134. Since the 2005 Act came into force there has been considerable debate and serious concern expressed regarding the impact of removing the ‘fit and proper test’ from the alcohol licensing regime in Scotland, and the lack of a ‘fit and proper person’ test has been much criticised by the police, Licensing Boards and those within the alcohol trade.

135. There is a widespread view amongst stakeholders that limiting consideration to relevant offences is unduly constraining to Boards who may have no choice but to grant licences to applicants that they consider to be a risk to the public.

136. The introduction of the ‘fit and proper’ test in this Bill will provide greater scope to present information to Boards, and give them the ability to consider a greater breadth of relevant information when making decisions about applicants, licence holders and connected persons. It will also provide Licensing Boards with greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information including police intelligence and any associations with those deemed to be unsuitable.

137. A definition of ‘fit and proper’ is not necessary as Licensing Boards are familiar with the ‘fit and proper’ determination from other licensing regimes and there is sufficient experience and case law to guide decision making. This is in accordance with various other Acts that use the test. Furthermore, a definition of ‘fit and proper’ could limit the range of information local authorities can consider and fetter their discretion. Each application should be considered on its own merits.

Spent convictions

138. Under the Rehabilitation of Offenders Act 1974, spent convictions are defined as convictions where a specified period of time has elapsed which allows an individual not to have to tell people about their previous criminal activity. For example, someone receiving a fine from a court conviction will be required to advise potential employers about their court fine for 5 years (an unspent conviction). Once 5 years have passed, this conviction becomes spent and it is no longer required to be disclosed.

139. The 2005 Act provides that spent convictions cannot be considered in any part of a Licensing Board’s deliberations, such as considering whether to grant personal or premises licences, or in hearings once the licence has been granted.

140. Key stakeholders have argued that it is imperative that Boards have as much information as possible at their disposal to allow them to make a considered decision on an application. Limiting Boards to the consideration of a definitive and restricted list of convictions for relevant offences permits unsuitable persons to operate within licensed premises and may contradict the five licensing objectives upon which the Act is founded (particularly ‘preventing crime and disorder’).

141. Consequently, this Bill repeals section 129(4) of the 2005 Act to allow Boards to consider spent convictions. Although the proposed changes would enable Licensing Boards to consider spent convictions for relevant offences, the existence of such convictions would not necessarily prevent an applicant from getting a personal licence. The fact that an applicant has convictions, whether spent or otherwise, may or may not act against them and this will be dependent on the nature and timing of the offence. The Board will consider each case on its own merits as they do with unspent convictions for relevant offences. To allow the consideration of spent convictions for relevant offences it will also be necessary to make amendments to the rehabilitation of offenders legislation. This is being taken forward outwith the Bill.

Consultation

142. In the Scottish Government consultation on Further Options for Alcohol Licensing, one of the most frequently received suggestions in this section of the consultation was that Licensing Boards should have greater powers to tackle crime, particularly serious organised crime, by allowing the consideration of a wider range of information. Over two thirds of respondents felt that legislation should be amended so that Boards may consider whether an applicant is a ‘fit and proper’ person. Less than ten per cent answered ‘no’ to this question.

Alternative approaches

143. During the Scottish Government consultation on Further Options for Alcohol Licensing, many stakeholders suggested that there should be a definition of fit and proper, and that this would apply consistency across Scotland and between different Licensing Boards. The Scottish Government is however concerned that any definition would unduly constrain Licensing Boards, making them unable to consider new or novel concerns. Local Authority councillors and clerks are already familiar with successfully applying the ‘fit and proper’ test in other regimes, and there is sufficient experience and case law to guide decision making so it is not necessary to further define it.

ADVANCING PUBLIC HEALTH

Policy objective

144. The 2005 Act brought in a range of provisions to ensure that public health is at the heart of the alcohol licensing regime in Scotland. A public health objective was created to ensure that Licensing Boards’ decisions are underpinned by the goal of protecting and improving public health. Furthermore, a duty was put on Boards to formulate a statement of licensing policy every 3 years and make an assessment of overprovision in any locality within the Board’s area.

145. The consultation process made clear that since the 2005 Act came into effect relatively recently in 2009, and Minimum Unit Pricing is still the subject of legal dispute, this is not the time for further substantial changes regarding public health. Instead, the Bill contains provisions to maximise the impact of the existing public health measures, particularly with regard to:

- protecting children and young persons from harm;
- statements of licensing policy; and
- overprovision.

Protecting children and young persons from harm

146. The 2005 Act has five objectives, one more than the Licensing Act 2003 for England and Wales which does not include an objective in relation to public health.

147. The licensing objectives are the engine that drives the 2005 Act. They are a key feature of Licensing Board policy statements, the basis for refusal of a premises or occasional licence, the attachment of conditions, sanctions on a personal licence holder or a competent ground for review of a premises licence.

148. The 2005 Act includes the objective ‘protecting children from harm’. The Act defines a child as “a person under the age of 16” and a young person as “a person aged 16 or 17”. Consequently, the ‘protecting children from harm’ objective does not apply to 16 and 17 year olds.

149. Young people are particularly vulnerable to the effects of alcohol, whether they are drinking themselves or being affected by the drinking of other people in their lives. Underage

drinking can cause short and long term harm to health, as well as put young people in dangerous situations when drunk. The scientific evidence is clear that an alcohol-free childhood is the healthiest and best option. The earlier a young person begins to drink alcohol, the more likely they are to drink in ways that can be risky later in life. For these reasons, it is vital that the health interests of young persons are at the heart of the licensing regime.

150. Furthermore, the distinction between children and young persons creates difficulties for Licensing Boards when dealing with issues around young persons and has the effect that issues around 16/17 year olds cannot be considered in relation to the ‘protecting children’ objective.

151. It is not envisaged that expanding this licensing objective will create adverse consequences, or affect the considerations that Boards undertake. The broadening out of the objectives within the Bill will give Licensing Boards greater scope to protect young persons.

Statements of licensing policy

152. The 2005 Act introduced a duty on Licensing Boards to issue a statement of licensing policy, before the beginning of each 3 year period, setting out their general approach to licensing decisions and outlining how the Board intends to promote the five licensing objectives.

153. This requirement constituted a fundamental change to how Licensing Boards operate and transformed licensing from an application-driven process to a policy-driven one. Since this legislation came into force, licensing decisions have become part of a wider policy context and a stated policy position can be used as grounds to refuse an application for a licence.

154. The Bill amends the legislation to provide that a new Board has to prepare a new policy statement within eighteen months of being appointed, and once agreed the policy has a duration of up to five years, although Boards would retain the ability to make changes during the life of a policy statement by way of a supplementary statement and to publish an earlier licensing policy statement.

155. Linking these statements of licensing policy to local authority elections will ensure that the Licensing Policy Statement better reflects the views of the current Board, and increasing the potential duration of the statement to five years both reduces the burdens on Licensing Boards, and by providing more time to prepare the statement, helps ensure that the statements are more robust, evidence-based and capable of withstanding legal challenge.

Overprovision

156. The 2005 Act places a duty on Boards to make an assessment of overprovision and include a statement regarding this in their licensing policy statement. This policy provides Boards with powers to consider the unique circumstances of their area and decide whether, based on local needs, it is appropriate to restrict access to alcohol through limits on new licences, licences of a particular type, or variations of existing licences.

157. Where it is assessed that there is overprovision a rebuttable presumption is created against granting new licences although each case is judged on its own merits and there is always the possibility of exceptions.

158. It is important that the overprovision assessment is an effective and robust tool for Licensing Boards. However, to date only a few Boards have assessed that there is overprovision in a particular area. It has been argued that Boards are wary of making use of overprovision policies through fear of legal challenge.

159. The approach adopted in the 2005 Act has the effect that the area for the assessment of overprovision arguably relates to localities within the Board area rather than the entire Board area. As a result of this, Boards have experienced difficulty in determining suitable localities and establishing sufficient evidence to support overprovision for small areas. Frequently, health indicators can only be demonstrated over larger areas. This presents an obstacle when considering the wider scope of the 'protecting and improving public health' objective and prevents Boards from considering the availability of alcohol across their whole geographical area.

160. The Bill addresses these issues by providing Boards with powers to assess overprovision for entire Board areas. Furthermore, the Bill makes clear that increased capacity can be considered separately from an increase in the number of licensed premises in terms of overprovision and that opening hours should also be considered. Even if there is no increase in total number of alcohol outlets, the overprovision assessment is relevant if existing premises attempt to increase their capacity and/or opening hours.

Consultation

161. All of the provisions to advance public health contained within the Bill were consulted on as part of the Further Options for Alcohol Licensing consultation exercise that ran from 19 December 2012 to 22 March 2013. A majority of respondents agreed with all of the proposed provisions regarding protecting children and young persons from harm, statements of licensing policy and overprovision.

Alternative approaches

162. The alternative approaches suggested by stakeholders to improve public health were considered, at the current time, to be unduly onerous on the licensed trade. There have been suggestions such as reducing off-sales opening hours, introduction of alcohol only checkouts in large multiple retail outlets, and placing a statutory duty on Boards to promote the licensing objectives and provide annual reports on how they did so.

163. The provisions contained in the Bill are those which were most effective at improving public health while remaining proportionate and relatively straight forward to implement.

IMPROVEMENTS TO THE EXISTING SYSTEM AND REDUCING BURDENS ON TRADE AND LICENSING BOARDS

Policy objective

164. A key goal of this Bill is to improve the performance of the licensing regime for the wide range of stakeholders who interact with it including Licensing Boards, police and the trade. This Bill takes forward a number of opportunities to reduce the burdens on trade and Boards without requiring a radical overhaul of the system. These measures are related to:

- Personal licences;
- Duty of Boards to produce annual financial report;
- Processing of applications and deemed grant;
- Relevant offences and foreign offences.

Personal licence

165. The 2005 Act requires those who authorise the sale of alcohol to possess a personal licence. All premises managers (also known as designated premises managers or DPMs) must possess a personal licence. To gain the personal licence, applicants must undergo training and gain a licensing qualification so this process plays an important role in ensuring that licence holders have appropriate knowledge of licensing matters.

166. Under the current licensing legislation, a personal licence has effect, subject to conditions, for 10 years from the date on which it is issued. If they wish to continue as a personal licence holder they must apply to the relevant Licensing Board for renewal of the licence, in ‘the period of 2 months beginning 3 months before the expiry date of the licence’.

167. The Bill extends the period in which personal licence holders may apply to renew their licence to 9 months, beginning 12 months before the expiry date of the licence. This change makes the personal licence administration more effective and trade-friendly as well as allowing the Boards a longer period of time to process applications.

168. Under the existing arrangements, where a personal licence is revoked for any reason, the person who held the licence may not apply for another one for five years. It is possible that some personal licence holders will fail to submit evidence of the refresher training within the time limit, for example as a result of forgetting about the deadline and consequently will have their licences revoked. If they cannot get another personal licence for five years this may result in them losing their jobs. Furthermore, it is good practice for licensed premises to have multiple personal licence holders and the current policy could lead to less personal licence holders.

169. The Bill amends the legislation so that if a personal licence is revoked under section 87(3) of the 2005 Act (for failure to comply with the training requirement), the licence holder will not have to wait 5 years to reapply for a personal licence, although they would still have to go through the cost and inconvenience of applying for a new licence, thus serving as a deterrent to those who may consider not undergoing the refresher training. This amendment provides a

more proportionate incentive for the licensed trade and facilitates licensed premises' best practice.

Duty of Boards to produce annual financial report

170. The 2005 Act enables the Scottish Ministers to make provision for the charging of alcohol licensing fees by Licensing Boards in respect of applications under the Act, and otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under the Act.

171. Licensing Boards charge fees for a range of activities such as applying for premises licences, annual fees for premises licences, applying for personal or occasional licences, and transferring or varying existing licences.

172. The fees regime is intended to reflect the Scottish Government's intention to make the system self-funding i.e. to cover both direct and indirect costs incurred by Licensing Boards. In other words, the money raised by fees should be broadly equivalent to the expenses incurred by the Board and the council for that area of the Board, in administering the licensing regime during that period.

173. After the fees regime came into effect in 2009, stakeholders in the licensed trade queried the disparities between fee levels in different local authorities and suggested that Boards should be transparent about these figures to demonstrate that their fees regime are based upon cost recovery (unless they choose to make a deficit).

174. Consequently, this Bill creates a duty on Licensing Boards to produce an annual financial report and provides for what information should be included in such a report. As Licensing Boards are already under an obligation to ensure their fee income is broadly equivalent to their costs, this duty will require them to make public the calculations that are already being carried out.

Processing applications, and deemed grant

175. The Bill includes provisions to ensure that licensing applications are processed more efficiently and brings these timescales in line with those in the Civic Licensing regime. It will require Boards to issue a letter of acknowledgement to applicants, unless it is impractical to do so, setting out the timescale within which the application must be decided. Where an application does not meet the laid down requirements, the Board must give notice to the applicant that they are treating the application as incomplete. The Board must determine every application within nine months of the date of receipt, unless this period has been extended by the Board applying to the sheriff for an extension. If the Board fails to determine the application within the permissible period then it will automatically be deemed to have been granted and the Board will be obliged to issue the licence/ appropriate authorisation. Although these provisions set a limit on how long a Licensing Board may consider an application for, the Scottish Government would expect all applications to be considered as quickly as possible and not to be unduly delayed.

176. These amendments will provide greater clarity for the licensed trade over the consideration of applications and the timescale for granting an application.

Relevant offences and foreign offences

177. During the consultation on Further Options for Alcohol Licensing that ran from 19 December 2012 to 22 March 2013 the most consistent suggestion for reform was for the Scottish Government to revisit the automatic requirement for Licensing Board to hold hearings when notified of relevant or foreign offences. This suggestion for reform was supported by both Licensing Boards and the licensed trade. The automatic requirement to have a hearing on every occasion a relevant or foreign offence is notified to the Boards, even if it is of little significance for the business being carried on and is of little consequence to the business or the licensing objectives, is considered to place an undue burden on Licensing Boards and the trade who may have to provide representation and obtain legal advice for multiple hearings across the different Scottish Boards.

178. Under the 2005 Act as it currently stands, when a Licensing Board receives notification of a conviction of the personal/premises licence holder or a connected person they must notify the Chief Constable of the notification. The Chief Constable must then provide the Licensing Board with a notice either i) advising that they are unable to confirm the existence of the convictions or that it is not a relevant or foreign offence; or ii) confirming the existence of the convictions and that it is a relevant or foreign offence. If the Licensing Board is notified that the conviction does exist and is for a relevant or foreign offence then they must make a personal/premises licence review proposal in respect of the licence. Where a Licensing Board makes such a proposal then the Board must hold a hearing for the purposes of considering and determining the proposal.

179. This Bill amends the 2005 Act so that if the Chief Constable merely confirms the existence of either a relevant or foreign conviction and does not recommend that the licence should be varied, suspended or revoked, then the Licensing Board are not obliged to make a review proposal or hold a hearing and can decide this based upon their own view as to whether the hearing/ proposal is or is not necessary for the purposes of the licensing objectives. If a sanction is to be considered then a hearing/ proposal is required.

180. If the Chief Constable recommends that, having regard to the conviction, the licence should be varied, suspended, revoked or endorsed then a licence review proposal must be made and a hearing must be held.

181. This amendment provides Boards with greater autonomy to make decisions as well as making their processes more streamlined and effective. It also reduces the burden and costs for trade.

Consultation

182. The Scottish Government consulted on a range of potential further options for alcohol licensing from December 2012 to March 2013. The responses made clear that although people do not want to see a root and branch review of licensing legislation, there are areas that are not working as effectively as they should be. Therefore, these provisions make the regime more effective for the trade and Licensing Boards.

183. The duty of Boards to produce an annual financial report was recommended by a group made up of representatives from the on and off trade as well as Licensing Board clerks, established to make recommendations to the Scottish Ministers about the fees system and the level of fees.

Alternative approaches

184. During the Scottish Government consultation on Further Options for Alcohol Licensing a number of alternative approaches were suggested that, although they may have helped progress other goals such as improving public health, would arguably be unduly onerous on the trade and Boards. One of the main goals of the Bill is to improve the existing system and reduce burdens, rather than bringing in radical new changes. Consequently, alternative approaches such as the introduction of separate alcohol only checkouts in large multiple retail outlets and placing a statutory duty on Boards to promote the licensing objectives and provide annual reports on how they did so, were not taken forward.

Effects on equal opportunities, human rights, island communities, sustainable development etc. of the alcohol provisions in the Bill

185. The provisions on the alcohol licensing regime are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion. The regime has no specific implications for island communities or sustainable development.

186. The Scottish Government considers that the Bill does not impact on the human rights of alcohol licence holders. Although current alcohol licence holders (both premises and personal licence holders) may believe that their human rights are infringed as the introduction of the fit and proper person test may result in their licence being revoked. The revocation would be done by the Licensing Board and not by Scottish Ministers. It will be for the Licensing Board to ensure that their actions are convention right complaint and that any revocation only occurs where the Board is satisfied, after having regard for the objectives, that the licence holder is no longer a 'fit and proper person' to hold the licence.

187. The Scottish Government also considers that the Bill does not impact on the licence holders right to fair trial. On each occasion where a licence holder may lose a licence or is being considered for refusal of a licence under the 2005 Act, on the grounds of not being a 'fit and proper person', there will be a hearing as per the existing hearing system provided in the 2005 Act. Where a licence is revoked or refused, a right to appeal exists to an appropriate sheriff principal or sheriff in an appropriate sheriffdom.

188. As such it is the Scottish Government view that the Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public safety.

PART 3 – CIVIC LICENSING

TAXIS AND PRIVATE HIRE CARS

Background

189. Taxi and private hire car services play an essential part in local transport networks, providing an invaluable service for both residents and visitors to Scotland. The aim of a licensing regime is the preservation of public safety and order and the prevention of crime. The Scottish Government needs, therefore, to have a licensing regime for taxis and private hire cars that can meet this aim and provide customers with a safe, reliable and accessible service.

190. Local authorities are responsible for the creation, management and enforcement of the local taxi and private hire car licensing regime following the framework provided for in the 1982 Act. In general this local process works well. Local authorities have discretion in applying a local regime that best meets the specific requirements of their local area and can take account of the views of both customers and trade.

191. However, the Scottish Government has been aware of a number of concerns with the taxi and private hire car licensing regime for some time. These have been highlighted by stakeholders during informal discussion and reinforced during the public consultation which closed last year. Concerns were largely based around 2 main elements:

192. Creating greater consistency within the regime and across different licensing regimes, in particular:

- Addressing issues with the variability in how legislation is interpreted and implemented;
- Encouraging a consistent approach to local authority practice where this is beneficial, while maintaining appropriate local flexibility;
- Amending legislation to take account of the changes to the current market for hire car services.

193. Widening the scope of while tightening the regulation of licensing regime. In particular:

- Addressing concerns that the legitimate trade is being unfairly challenged in some areas by businesses and individuals circumventing or abusing/ignoring the licensing regime. This then has an effect on public safety;
- Improving compliance checking within the regime.

194. Both prior to and during the consultation there have been calls for a thorough and radical review of the 1982 Act. However, the Scottish Government believes that the 1982 Act allows local authorities sufficient and appropriate flexibility to adapt their local licensing regimes to their local circumstances. This is an important aspect of the licensing regime and the Scottish Government is keen to maintain the elements of the system that work well.

Policy objective

195. While the provisions within this Bill aim to partly address the concerns raised, this is part of a wider body of work that will be undertaken following the legislative process including updates to secondary legislation and guidance.

Creating greater consistency

196. A significant element of the purpose of the provisions allowing licensing authorities to refuse private hire car licences on the basis of overprovision and to test private hire car drivers, is to bring a degree of consistency in the way local licensing authorities can manage taxis and private hire cars if they so wish. They are not requirements and can be used alongside or independently from the similar powers in relation to taxis. This is, in part, an acknowledgement that in parts of the country, both taxis and private hire cars are essentially operating in a very similar market. Some of the distinctions between their mode of operation – pre-booking versus ranks and hailings – have been blurred with changes in technology.

197. The Scottish Government does not consider it appropriate or proportionate at this time to consider a change to the current structure of a two-tier licensing regime that makes a distinction between taxis and private hire cars. However, the Scottish Government understands that some local licensing authorities can experience difficulty with managing local provision without explicit tools such as an ability to limit numbers of private hire cars or require testing of private hire car drivers.

198. While the Scottish Government recognises that there will be benefits in bringing a more consistent approach to licensing taxis and private hire cars, significant distinctions remain between the two types of service. With the introduction of a power to refuse a private hire car licence on the basis of overprovision, the Scottish Government chose not to extend the provisions already in place in section 10(3) in relation to taxis using an assessment of ‘unmet demand’. Because private hire cars can only be pre-booked ‘demand’ for them cannot be measured in the same way e.g. waiting times. An over-supply of private hire cars manifests differently e.g. private hire cars attempting to pick up passengers without a pre-booking. The Scottish Government intends to provide updated guidance to local licensing authorities to share best practice in developing relevant policies.

199. The Scottish Government would expect local authorities to exhaust other means of controlling the negative impacts of overprovision before considering the use of this power, e.g. increasing enforcement activity against private hire cars attempting to pick up passengers without a pre-booking or ensuring stringent training is undertaken by drivers before being granted a licence to increase professionalism and legal operation.

Widening the scope and tightening the regulation of the licensing regime

200. The main provision in the Bill that will extend the licensing regime for taxis and private hire cars is the changes to section 22 of the 1982 Act which removes the exemption at subsection (c) that 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 effectively brings hire cars that are being used on contract within the licensing regime for taxis and private hire cars. There is a view expressed by representatives from the police, local authorities and the currently licensed trade,

that there are some types of work currently being undertaken under the section 22(c) exemption that are effectively private hire work. This area of licensing has been described as a ‘grey area’ and that there is a need for clarity to ensure the travelling public are benefitting from the same levels of scrutiny of the service as those travelling in taxis and private hire cars.

201. A similar exemption was removed from private hire licensing legislation in England and Wales, coming into effect in January 2008. A ‘Review of the Impact of the Repeal of the Private Hire Vehicle Contract Exemption’ was published in November 2009. This highlighted a number of lessons learned, particularly around the difficulty in estimating numbers of those who would be affected and the level and quality of guidance provided in advance of the repeal coming into effect. There had also been concerns that a wide variety of activities would be significantly affected by the repeal although this was not generally found to have happened. Taking account of the experience in England and Wales, the removal of the ‘contract exemption’ from the 1982 Act will not come into effect immediately. The Scottish Government has also taken the precaution of adding an order-making power which allows the Scottish Ministers to make regulations specifying further exemptions from taxi and private hire car licensing. This is to help address any issues with the removal of the exemption if it becomes clear there are significant unintended consequences affecting some types of operation.

202. The Scottish Government has had representations from companies currently operating under the exemption who have expressed concern at the impact of being brought within the licensing regime. This was not overwhelmingly against such an extension but explained the nature of their business and the difficulties they would face depending on how the exemption was introduced. The Scottish Government will use the time before this provision comes into effect to ensure all individuals and businesses that will be affected have an opportunity to clarify their own position and local authorities have an opportunity to develop appropriate policies and conditions to incorporate the new licence holders successfully.

Consultation

203. Since the end of 2011, officials have been reviewing information produced on the licensing regime to date and have had fresh discussions with stakeholders, including a public consultation which ran from 28 November 2012 to 15 March 2013. Sixty eight responses were received during the public consultation. In addition, officials attended a number of meetings to discuss the consultation. Representatives at these meetings included, passenger groups (primarily focussed on passengers with disabilities) local authority officials with responsibilities for licensing, police and trade (taxi, private hire and contract hire).

Alternative approaches (and role/place of legislative changes)

204. The provisions included within the Bill are part of a wider package of work that will be undertaken following this legislative process. This includes amendments to secondary legislation and updating guidance. The main elements that will be addressed via secondary legislation are an update to the Booking Office licensing regime and a consideration of mandatory conditions for all taxi and private hire car licence types.

205. The first alternative approach to the provisions presented here would be to do nothing. The 1982 Act provides a broad framework and local licensing authorities have a relatively high

degree of flexibility in how they administer their local licensing regime. The licensing of taxis and private hire cars could continue without changes to primary legislation. However, the changes the Scottish Government is introducing recognise that there are some limitations on how licensing authorities can manage their local regimes.

206. The second alternative approach would be to radically overhaul the 1982 Act. Under this approach the Scottish Government could move to a fundamentally different approach e.g. a national licensing system or change fundamental elements of the current system e.g. moving to single tier licensing (merging taxis and private hire cars). The Scottish Government has stated that the Scottish Government believes the 1982 Act continues to serve the people of Scotland well and allows local authorities sufficient and appropriate flexibility to adapt their local licensing regimes to their local circumstances. This is an important aspect of the licensing regime and the Scottish Government is keen to maintain the elements of the system that work well. Any radical overhaul would also clearly require a very high level of resource and would cause significant disruption for the trade, local authorities, police and ultimately the travelling public.

207. The third alternative approach would be to rely solely on non-legislative activity and changes to secondary legislation. This will have some effect, but the Scottish Government believes it has been proportionate in selecting elements that will have a significant impact without dramatically changing the nature of a system that it believes is working well.

Effects on equal opportunities, human rights, island communities, sustainable development etc. of the taxi and private hire car provisions in the Bill

208. The provisions on taxi and private hire car licensing are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

209. The Scottish Government considers that the Bill does not impact on the human rights of those previously exempt from the taxi licensing regime via the exemption in section 22(c) of the 1982 Act. Although those currently exempt under section 22(c) may believe that their human rights are infringed by the application of the existing licensing system, the continued ability to provide transportation services will still be permitted if the conditions set out in the legislation are met. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public safety of passengers and general crime prevention.

210. The regime does not have specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. The new provisions are flexibly drafted to allow different local authorities to tailor their approach to suit their needs and circumstances. The Scottish Government does not anticipate any implications for sustainable development.

METAL DEALERS

Background

211. Metal theft has been a growing problem in recent years. This has been driven in large part by rising prices for scrap metal in international commodity markets. There is therefore a

correlation between rising international levels of construction and the incentive for criminality in Scotland. This has meant that whilst metal theft offences were relatively low in line with the economic slowdown of 2008-09, they have increased dramatically as the world economy has picked up.

212. Metal thefts have manifested in a variety of different forms ranging from low level opportunistic offences through to serious organised crime crossing international boundaries. Offences at the lower level have included theft of brass plaques and door knockers and removal of street furniture such as signage and benches. Rising up the scale there have been numerous examples of roof lead being taken from public buildings such as churches and schools and plant machinery being taken from hospitals. At the higher end there have been large scale thefts of miles of railway cable and electricity sub-stations that have caused significant disruption. There has also been an organised crime dimension with scrap metal appearing in container transports destined for abroad.

213. An important feature of metal theft is that the consequences of a metal theft are out of all proportion to the scrap value of the metal stolen. The costs of metal theft include the cost of replacement and repair, wider economic costs through delay and disruption to business and members of the public and in some cases there are emotional costs. At the extreme metal thefts have resulted in loss of life and serious injury.

214. For example the costs of a cable theft from a railway include delayed commuters being unable to reach places of work. The costs of attacks on the electricity networks have resulted in homes and businesses losing electricity for substantial periods. Loss of telephony and broadband services has a cost to business and causes real inconvenience to members of the public. There has also been widespread outrage caused by the theft of war memorial plaques and damage to churches and other historic buildings.

215. Particular examples include:

- Thieves cut power to 280 homes in Greenock and caused four house fires after stealing copper wire worth about £40 from an electricity substation. The wire theft from substation led to a dangerous power surge in some homes. Four fires have been reported, with one family having to flee their home. (BBC – 19 November 2013);
- In Milnathort bronze war memorial plaques were created as part of a £13,000 restoration of the memorial. They were stolen from the stone structure within hours of protective fencing being removed for its official unveiling. (BBC – 5 August 2013);
- Three separate incidents of cable theft on the same seven mile section of line between Huntly and Kennethmont on the Aberdeen to Inverness route. Engineers replaced over a mile of cable after it was stolen on three successive evenings from the Aberdeen to Inverness railway line. The theft caused the cancellation of trains between Inverurie and Huntly for a period of days (BBC – 31 July 2013);
- St Mary's cathedral in Edinburgh suffered nine attacks on its roof in the space of two and a half years resulting in £40,000 of costs. (Scotsman – 10 April 2013);

- Since 2011 Scotland has seen 605 attacks on electricity sub-stations. The average direct cost of each attack is £2500 (labour and material costs) (Industry briefing paper 2014).

216. Because the costs of metal theft fall in such a widespread fashion covering both direct and indirect costs they are extremely difficult to measure. As explained above the costs go beyond the cost of replacing stolen metal and making good repairs, they extend to the costs of delayed commuters and lost services. Clearly the cost to a community of the loss of a war memorial or a local landmark such as a statue cannot adequately be expressed in monetary terms.

217. An earlier consultation by the Scottish Government on metal dealer regulation relied upon UK wide figures to estimate the cost to the economy of metal theft. A report commissioned by the Association of Chief Police Officers in 2010 estimated the UK wide costs at £770 million. A study by Deloitte posited a lower figure of £220 - £260 million. This suggested about £100 million of direct costs to conduct repair and replacements and a further £120 million to £160 million of indirect costs. A more recent study has been conducted by the Association of Chief Police Officers in Scotland and has for the first time looked at the situation specifically in Scotland. It estimated the value of metal theft in Scotland at just under £11 million over a two year period from 2011-2013. These figures relate purely to the value of the metal stolen and do not look at the indirect costs and collateral damage of these thefts. The true costs are therefore far higher.

218. Since metal theft emerged as a growing problem a variety of measures have been taken to tackle the problem. A dedicated task force has been established by The British Transport Police with a focus on visiting metal dealers and roadside stops amongst other activity.

219. The Crown Office and Procurator Fiscal Service has established a tougher prosecution policy which means there will be a strong presumption for prosecution of offenders at Sheriff Court level; the social and cultural impact of metal theft will be considered in addition to the financial impact; and victim impact statements will be submitted to the Court.

220. The Scottish Environment Protection Agency has been involved in action to ensure compliance with all aspects of environmental legislation with regard to the transportation of waste metal and its processing. This included possession of appropriate Waste Carriers Registrations, Scrap Metal Dealers licensing/ exemptions and delivering the expected duty of care.

221. A national metal theft working group has been established involving key players charged with reducing metal theft as well as frequent victims of metal theft such as infrastructure companies. The group has co-ordinated action against metal theft as well as sharing best practice in efforts to prevent and detect the crime by, for example, better labelling of metal, smart water technology, improved security etc..

222. In spite of this activity the Scottish Government is convinced that legislation is required to strengthen the current licensing regime for metal dealers that can no longer be regarded as fit for purpose.

Policy objective

223. The Scottish Government believes that efforts to reduce metal theft need to be supported by legislative action. Metal Dealers provide a valuable service to the community by providing a means for unwanted metal to be recycled into a useful raw material for manufacturers. The industry is a significant employer and is valued by industry estimates at £470 million. Nevertheless the scrap metal industry does provide a route by which a metal thief can convert their stolen goods into cash.

224. The industry has been regulated for over 30 years under the 1982 Act. A review of this legislation is now long overdue to ensure appropriate, robust and effective regulation of metal dealers and to close down the trade in stolen metal. The Bill therefore includes a number of proposals aimed at modernising the licensing regime and ensuring better oversight of dealers, improved record keeping and reliable identification of those selling metal for scrap. It also proposes that selling metal in exchange for cash would be prohibited so as to ensure an auditable, traceable transaction is established. These proposals support the aims of tackling areas of weakness in the current licensing scheme, providing a tighter licensing regime with stronger inspection and scrutiny of metal dealers and dealing with the perception that stealing metal and selling it to a scrap metal dealer is a crime that is unlikely to be detected. Improving detection and deterring thefts are at the heart of the proposals.

225. The Bill proposes specific steps to improve licensing arrangements; in particular:

- The removal of an exemption warrant system that allowed a metal dealer with a larger turnover to not be subjected to licensing requirements and therefore to be operating without appropriate levels of scrutiny;
- The limiting of payment for metal by metal dealers and itinerant metal dealers to prescribed methods i.e. bank transfer or cheque. By removing the option of paying in cash it will be ensured that a metal thief is not attracted by the possibility of being paid in an anonymous fashion. Instead, transactions will be traceable and auditable with a proper paper trail, thus deterring theft and increasing chances of detection;
- Improved standards for identification of customers by ensuring that proper ID is seen and recorded;
- Improved standards of record keeping by specifying the records that must be retained for inspection. These include details of the customer, details of the metal being bought or sold and documentation supporting the cashless payment;
- The removal of a mandatory requirement that dealers should not process metal for 48 hours after receiving it. It is felt that this step is impractical for many dealers and should not be a compulsory requirement (though local licensing could impose it case by case).

Consultation

226. An initial consultation on a limited proposal to increase the number of dealers falling into the licensing regime was conducted between November 2011 and February 2012. This consultation concluded that a wider package of proposals was required. A further consultation

was conducted between April and July 2013 and included many of the proposals that are now being taken forward by the Bill.

227. The consultation showed widespread support for a toughening of the licensing regime for metal dealers. This support derived from local authority regulators, the Police and many of the organisations and businesses that find themselves regular victims of metal theft.

228. Dealers were for the most part accepting of the need for more effective regulation but were keen to ensure that their businesses were not damaged by excessive or inappropriate requirements.

Effects on equal opportunities, human rights, island communities, local government and sustainable development etc. of the metal dealers provisions in the Bill

229. The provisions on the metal dealers licensing regime are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

230. The Scottish Government considers that the Bill does not impact on the human rights of those previously exempt from the metal dealer licensing regime via the exemption provided in section 29 of the 1982 Act. Although those currently exempt under section 29 may believe that their human rights are infringed by the application of the existing licensing system, the continued ability to carry on the business of a metal dealer will still be permitted if the conditions set out in the legislation are met. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public interest argument to minimise the potential for selling illegally obtained metal in order to address the harm caused by instances of metal theft.

231. The regime has no specific implications for island communities or sustainable development.

PUBLIC ENTERTAINMENT VENUES

Background

232. Licensing arrangements should be proportionate and appropriate to what is being regulated. In light of that the Scottish Government believes that less onerous licensing requirements for theatres may in some circumstances be appropriate.

233. Currently, theatres are licensed under the Theatres Act 1968. This is a mandatory licence that requires all premises at which public performances of a play are staged to hold a licence. No allowance is made for the size of the premises or the potential audience. This contrasts with other forms of public entertainment which are licensed under the public entertainment licensing regime under the 1982 Act. This is a flexible system that allows local licensing authorities to determine in a local context how licensing should be regulated in their area. Authorities might, for example, use the current system to determine that concerts should require a public entertainment licence but not concerts with an audience of under 20 people.

234. By bringing theatres under the public entertainment licensing arrangements greater flexibility will be allowed. It will be open to a local licensing authority to exclude premises offering plays only to very small audiences from the licensing requirement.

235. It also allows greater consistency and legislative clarity by bringing theatres within the same public entertainment licensing arrangements as other forms of the arts such as concerts, comedy shows etc..

Policy objective

236. The Scottish Government proposes to repeal the licensing requirement for theatre under the Theatres Act 1968. It will therefore be possible to allow local licensing authorities to flexibly licence plays under local licensing requirements.

237. In addition the Bill replicates the anti-censorship provisions contained within the 1968 Act in the 1982 Act.

Consultation

238. Informal discussions have been held with those representing licensing authorities and arts groups.

Alternative approaches

239. It would be possible to continue with existing arrangements but that would not deliver the benefits of greater flexibility that will be delivered by the bill proposals.

Effects on equal opportunities, human rights, island communities, local government and sustainable development etc. of the public entertainment venue provisions in the Bill

240. The provisions on the public entertainment licensing regime are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

241. The Scottish Government considers that the Bill does not impact on the human rights of current theatre licence holders. Theatre licences have a maximum duration of one year. Ancillary provisions will provide that those in possession of a theatre licence will be allowed to carry out performances under that licence until such point as it expires. Thereafter theatres will be regulated through the public entertainment licensing regime in the 1982 Act.

242. The regime has no specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. There are no effects on sustainable development.

SEXUAL ENTERTAINMENT VENUES

Background

243. The Scottish Government is determined that appropriate licensing arrangements are put in place to regulate venues offering sexual entertainment such as lap dancing. Existing arrangements are no longer effective and our preferred way forward is to establish a dedicated licensing regime specifically for sexual entertainment venues.

244. It has long been recognised that licensing is required in this area. There are also concerns that the nature of sexual entertainment may associate with risk of criminality. As with other forms of public entertainment there are also risks of adverse impacts on neighbours and general disorder. There is also concern regarding the conditions in sexual entertainment venues. Evidence points to specific issues such as financial exploitation of dancers through too many dancers paying a fee to organisers but then finding not enough customers are attending to allow a return and physical issues such as inadequate changing areas.

245. Additionally, the Scottish Government's definition of violence against women includes commercial sexual exploitation which encompasses the activities covered by this licensing regime. Local licensing authorities are best placed to reflect the views of the communities they serve and determine whether sexual entertainment establishments should be authorised and under what conditions. Where a venue is approved, licensing conditions and enforcement should assist in protecting the safety and wellbeing of both staff and customers and the wider public.

246. There has been a long history of attempts to improve regulation in this area. In 2005, the then Scottish Executive set up a Working Group on Adult Entertainment to review the scope and impact of adult entertainment activity and make recommendations to Ministers on the way forward. This followed concerns expressed about the lack of controls on adult entertainment activity. The Group made a number of recommendations aimed at improving standards in the industry, ensuring the safety of performers and customers, regulating the impact on the locality, improving local accountability and control and ensuring that there was no inadvertent impact on artistic freedoms. The full recommendations and post consultation work can be found in the Group's reports:

<http://www.scotland.gov.uk/Publications/2006/04/24135036/0>

<http://www.scotland.gov.uk/Publications/2006/04/24111914/0>

247. At the time, it was felt that as sexual entertainment venues also sold alcohol and therefore required alcohol licenses, it was best left to local Licensing Boards to regulate adult entertainment via the licensing system of alcohol. It would be up to local boards to consider the situation in their locality and set policies accordingly. They would have the discretion to use the recommendations of the Working Group as a template.

248. A specific system of licensing for sexual entertainment was considered by the Scottish Parliament in 2010 as part of the Criminal Justice and Licensing (Scotland) Act 2010. These proposals largely mirrored those that had been introduced in England and Wales by the Policing and Crime Act 2009. Whilst the Scottish Government supported such a move, the Scottish

Parliament rejected these proposals due to concerns around the effect of operating a dual licensing system with sexual entertainment being regulated under a regime of its own as well as under the alcohol licensing system. In addition, there was concern that the proposals were introduced late in the Bill process and had not had the opportunity for scrutiny.

249. However, the regulatory context has changed since 2010. Recent court judgements (see *Brightcrew Ltd v The City of Glasgow Licensing Board* [2011] ScotCS CSIH_46 (12 July 2011)) have called into question the ability of Licensing Boards to set conditions that stray from a tight focus on the sale of alcohol. This leaves uncertainty in the regulation of sexual entertainment, with many Licensing Boards believing that the alcohol licensing system is not, as currently constructed, able to provide adequate control, and that there is no effective alternative in place.

250. The view of the Scottish Government is that a specific licensing regime for sexual entertainment venues (of which the Scottish Government believes there are around 20 in Scotland) is the best solution for future regulation of the industry. It removes uncertainty around attempting to regulate under alcohol licensing matters that go beyond the remit of that scheme. It offers local licensing authorities the ability to consider local circumstances and develop approaches appropriate to those circumstances. This would include the ability to set a desired number of sexual entertainment premises for their area (and for that number to be zero). It would also include the ability to set conditions that control the conduct of activities on premises in their area.

Policy objective

251. The proposals put forward by the Scottish Government create a new licensing regime for sexual entertainment venues. The new regime falls into the civic licensing arrangements under the 1982 Act and uses in part the architecture of existing provisions for sex shops.

252. The provisions require a licence for premises operated as sexual entertainment venues for financial gain. Definition is provided as to what is meant by sexual entertainment both to capture what is intended to be licensed but to avoid licensing what is not. Definition is also provided for “nudity” to avoid the use of minimal or transparent garments to avoid circumvention of the licensing intent.

253. The proposals also allow for greater local control over the provision of sexual entertainment venues in an area. There are provisions for a local licensing authority to set an appropriate number of sexual entertainment venues for their area (and for that number to be zero). It would be grounds to refuse an application if the number of venues in an area or locality already meets the appropriate number.

254. Whilst it is expected that the licensing scheme will encompass lap dancing venues, depending upon the exact nature of the activities taking place a number of other activities could be included e.g. strip shows, peep shows, live sex shows. Powers are taken to specify by order exceptions from the licensing requirement. These could be used if it transpires that some unanticipated activity is falling within the licensing ambit.

255. It is intended that any premises that holds activities falling within licensing on less than four occasions in a twelve month period should not be licensed. Whilst the number is arbitrary, it is not intended that very occasional activity should be licensed e.g. a pub which allows a birthday party with some sort of performance. Whilst there is no distinction in the activity, frequency makes a qualitative difference and to not allow a de minimis level of activity would significantly increase the scope of the scheme. The de minimis level has not been set so high so as to allow a loophole to emerge whereby frequent activity is unlicensed.

Consultation

256. A consultation on legislative proposals was conducted between April and September 2013. The consultation attracted a significant response, albeit 90% of the responders were near identical responses sent as part of an organised campaign of opposition to a licensing scheme. Whilst the responders did not identify themselves it can be inferred that they were from those who either work in the industry or those who are customers.

257. Amongst the other responders (local authorities, Police and violence against women and gender groups principally) there was wide support for the principle of a new licensing regime.

258. Concern was raised by some arts organisations about possible inadvertent impact on their activities.

Alternative approaches

259. It would be possible to continue to regulate sexual entertainment venues through existing alcohol licensing arrangements. As discussed above, however, this no longer offers an effective means of regulation. Licensing Boards are too circumscribed in their ability to set conditions or to refuse licence applications where they deem it necessary.

Effects on equal opportunities, human rights, island communities, and sustainable development etc. of the sexual entertainment provisions in the Bill

260. The provisions on licensing of sexual entertainment are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

261. The Scottish Government considers that the Bill does not impact on the human rights of those who operate sexual entertainment venues. Although current owners of sexual entertainment venues may believe that their human rights are infringed by the introduction of a specific entertainment venue licence. Where a local authority decides that the licensing of sexual entertainment venues should apply to their area, the continued ability to carry on the business of a sexual entertainment venue will still be permitted if the conditions set out in the legislation are met.

262. There is however a possibility that a local authority will decide that whilst licensing of sexual entertainment venues should apply to their area, they may also determine that the appropriate number of said venues for their area is less than the number present (or zero). In such circumstances, an existing venue may not be granted a licence. The Scottish Government

considers that sexual entertainment venue legislative provisions are capable of being compliant with the convention rights on the basis of being legitimate means of reducing serious criminality. However, the local authority in implementing the provisions shall have to ensure that they give effect to the provisions in a manner likewise compliant with the convention rights and do not put in place a blanket ban or rigid policies which take no consideration of the merits of each case.

263. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with public interest of reducing serious organised crime.

264. The regime has no specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. There are no effects on sustainable development. Whilst the proposals are not discriminatory *per se* there is a clear gender based impact given the overwhelming majority of those employed in the industry are female.

MISCELLANEOUS AND GENERAL

Background

265. In addition to the amendments to specific regimes within the 1982 Act, there are additional provisions that will have effect across the licensing Parts of the 1982 Act and aim to create greater consistency and clarity in the licensing regime.

Policy objectives

Creating greater consistency

266. The Bill includes the power for the Scottish Ministers to make provision for the procedure to be followed at or in connection with hearings. This power will provide Ministers with the ability, if considered necessary and appropriate, to bring a level of consistency in the way hearings are conducted both across local licensing authorities and across civic and alcohol regimes. There are some similarities in the needs of participants in hearing processes across alcohol and civic regimes. If any issues are being resolved in relation to hearings under alcohol licensing, using the similar power, it would be helpful to be able to transfer any useful practice across to the civic regimes.

267. The Bill creates a new role of ‘Civic Licensing Standards Officer’ (CLSO). The purpose of this is to provide a mandatory element of capacity to check compliance and provide guidance within the civic regimes. The provisions introduce a statutory requirement for a new role with the same powers and duties as an ‘authorised officer’ within the 1982 Act but with specific functions in relation to providing information and guidance, checking compliance, providing mediation and taking appropriate action on perceived breaches of conditions to a licence provided under the 1982 Act. This is modelled on the successful Licensing Standards Officer (LSO) role within the 2005 Act. The Scottish Government is aware that many local licensing authorities already have in place high quality support of this kind and it is not intended to not disrupt good practice where it is happening.

Providing clarity

268. Where it has not already been provided for, the Bill will provide for the deemed granting of a licence where the Local Authority has not either decided on an application or sought an extension from the sheriff within a set period. It is already the case that civic licensing decisions need to be reached within a period of nine months, with three months being allowed for a licensing authority to consider an application and a further 6 months being allowed for a final decision to be reached. If a decision is not reached then the application is deemed to have been granted. This procedure enables an applicant to be confident that a decision making process cannot be allowed to drag on indefinitely. The Bill proposes extending the deemed authorisation procedure beyond applications to other matter such as applications for variations and temporary licences.

269. The Scottish Government believes that businesses and individuals should be able to interact with licensing authorities in the way that is most efficient and convenient. For most people, that means being able to submit applications and other communications electronically. Whilst many licensing authorities already accept applications in that fashion, the Bill takes the opportunity to make clear that electronic applications are acceptable.

Consultation

270. Questions were asked in relation to the provisions on hearings and CLSOs in the consultation to proposed changes to the licensing regime for taxi and private hire cars. Additionally, the Scottish Government has had informal discussion with stakeholders, primarily with representatives from local licensing authorities in order to refine our understanding of the impact these provisions may have.

Alternative approaches

271. There were some proposals consulted on that either did not receive a great deal of support and/or were not considered to have a sufficiently significant impact to justify legislative change. These include: the introduction of licensing objectives to the 1982 Act; a change to the structure of the consideration of 'fit and proper' in a licence application; and the introduction of a time limit within which police should provide information in relation to an application.

272. An alternative approach to the selected provisions would be to do nothing and make no changes to the primary legislation. The 1982 Act provides a broad framework and local licensing authorities have a relatively high degree of flexibility in how they administer their local licensing regime. This is a key feature of the 1982 Act. However, this would mean the Scottish Government would be unable to bring any consistency or clarity to significant elements of the Act where it has received representation that this would be beneficial or indeed necessary in order to ensure compliance with the EU Services Directive. In relation to hearings, it is seen as a proportionate response to provide an order-making power to enable us to make regulations at an appropriate time after further engagement rather than provide detailed prescription at this point.

273. Another alternative approach would be to provide more prescriptive requirements e.g. in relation to the CLSO role. However, the Scottish Government recognises that, in the case of

CLSOs, local authorities require a reasonable degree of flexibility to ensure they can respond in a way that best suits their circumstances.

Effects on equal opportunities, human rights, island communities, sustainable development etc. of miscellaneous and general provisions in the Bill

274. The provisions are not discriminatory on the basis of gender, race, age, disability, sexual orientation, marital status or religion.

275. The Scottish Government considers that the introduction of CLSOs in the Bill does not infringe on the human rights of those who operate in the areas subject to a licensing regime provided in Part 2 & 3 of the 1982 Act. The powers of entry, inspection, testing of vehicles, search, seizure and forfeiture conferred on CLSOs, are already conferred on authorised officers of the licensing authority in the 1982 Act.

276. The Scottish Government considers that the addition of CLSOs to exercise these existing functions does not raise any additional questions regarding an interference in the possessions or right to respect for private and family life of those who operate in the areas subject to a licensing regime provided in Part 2 & 3 of the 1982 Act. The Bill does not discriminate against individuals and the policy seeks to balance the rights of the individual with the public interest argument of ensuring that all those who work in the areas subject to a licensing regime provided in Part 2 & 3 of the 1982 Act, would be subject to the enforcement provisions provided by existing authorised officers and by the new CLSOs

277. The regime has no specific implications for island communities and the important elements of local flexibility are maintained within the licensing regime. There are no effects on sustainable development.

This document relates to the Air Weapons and Licensing (Scotland) Bill (SP Bill 49) as introduced in the Scottish Parliament on 14 May 2014

AIR WEAPONS AND LICENSING (SCOTLAND) BILL

POLICY MEMORANDUM

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