

Further Options for Alcohol Licensing - Consultation Paper

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Ministerial Foreword



With the Licensing (Scotland) Act 2005 and subsequent measures, both in terms of primary (Acts) and secondary legislation (SSIs and regulations) the past few years have seen major reforms to the alcohol licensing regime.

We fully recognise the energy and commitment from trade, Boards, LSOs, the police and others in bringing in this new regime and making it work. However we are also willing to listen to their concerns about where they are experiencing difficulties, or where the legislation is unclear or ineffective.

We have therefore carefully considered what the trade, Boards, the police, Licensing Board clerks, and others, have told us. We have also considered the findings of work like the NHS Health Scotland research to evaluate the regime and the joint report by Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems on “Rethinking Alcohol Licensing”.

We have developed a series of proposals to address these concerns. These proposals have been grouped under two themes, proposals to strengthen the powers of Licensing Boards and the police, and proposals to improve the effectiveness of the licensing regime. In addition we anticipate that these proposals will contribute to our overall aims of addressing the problems of alcohol misuse, while minimising the burdens on the legitimate trade and regulators.

This work exists in a wider context, we are leading the UK with our work to address alcohol misuse through introducing minimum

pricing, while we are addressing the impact on trade and regulators through our ongoing work to review fees, update the guidance for licensing boards and bring forward a Better Regulation Bill.

We would welcome your views on these proposals. Our views are not fixed and we are committed to an open and productive discussion on these proposals.

A handwritten signature in black ink that reads "Kenny MacAskill". The signature is written in a cursive, slightly slanted style.

Kenny MacAskill MSP
Cabinet Secretary for Justice

Chapter 1 - Introduction

1. The Licensing (Scotland) Act 2005, drew on the work of the Nicholson and Daniels Committees, fully coming into effect on 1 September 2009. Since then it has been updated by the Alcohol etc. (Scotland) Act 2010 and the Criminal Justice and Licensing (Scotland) Act 2010, as well as relevant secondary legislation.

2. These measures have delivered significant improvements in alcohol licensing, but the pace of legislative change has created issues of its own. Not all aspects of the licensing regime are working effectively and stakeholders such as the police and local authorities have highlighted areas that require attention. Concerns have been raised around such issues as whether the 2011 Brightcrew decision limits the ability of Boards to consider wider issues, the treatment of members' clubs and procedures at Licensing Boards.

3. We are also keen to strengthen the powers of Licensing Boards and the police, and are seeking views on proposals to criminalise the supply of alcohol to under 18s in a public place, making it easier to address proxy sales of alcohol and giving the police and Boards powers to impose restrictions on licensed premises where disorder is likely to occur.

4. In addition, we remain committed to addressing the issue of alcohol misuse, for example through proposals to strengthen the requirement on Boards to assess overprovision.

5. This consultation is a single component within a programme of work to update and improve the legislation in relation to licensing. The consultation for a Better Regulation Bill concluded on 26th October, the consultation on the licensing of taxis and private hire cars commenced on 28th November. Work is already ongoing to review the alcohol licensing fees regime and update the guidance to Licensing Boards.

6. We would welcome your views on these proposals, recognising that for some people only a few of these proposals might be of interest. Respondents are welcome to respond on as many or as few questions as they want to. It is however vital that the Respondent Information Form is fully completed with any response, it would also be useful to know on what basis you are responding.

7. Finally, in order to assist with the analysis of this consultation, can you indicate whether you are responding on behalf of a particular business type of business or organisation.

- | |
|---|
| <p>1. Are you responding as an;</p> <ul style="list-style-type: none">(a) individual(b) primarily on-trade business(c) primarily off-trade business(d) members' club(e) local authority(f) another business or organisation, please specify |
|---|

Chapter 2 - Proposals to strengthen the powers of Licensing Boards and the police

1. Further criminalising the supply of alcohol to under 18s
- extend existing criminal law to cover the supply of alcohol to under-18s in a public place.
2. Restrictions where disorder is likely to occur –
police powers
3. Restrictions where disorder is likely to occur –
Licensing Board powers
4. Enable Licensing Boards to apply new local licensing conditions to all existing licensed premises without the need to update individual licences.
5. Reintroduction of the “Fit and Proper” test - Licensing Boards are currently limited to considering relevant convictions notified by the Chief Constable when determining whether someone should be granted a personal licence.
6. Place a statutory duty on Licensing Boards to promote the licensing objectives.
7. Place a statutory duty on Licensing Boards to report annually on how the board fulfilled its duty to promote each of the licensing objectives
8. Place a statutory duty on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy.
9. Extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster limiting appeals against an adopted licensing policy statement outside its introductory period.
10. Consideration of English Language ability

Proposal 1 - Further criminalising the supply of alcohol to under 18s - extend existing criminal law to cover the supply of alcohol to under-18s in a public place.

8. The SNP manifesto included a commitment to take forward action as follows.

“We will also clamp down on those adults who supply booze to kids. A legal loophole means that adults can buy alcohol for someone under the age of 18 if the alcohol is consumed in public. This encourages outdoor drinking dens of young people, where those in the group who are over 18 buy alcohol for younger members. We will close this loophole and give the police the power they need to disrupt these drinking dens.”

9. Working in conjunction with early intervention campaigns to address underage drinking and reduce alcohol fuelled anti-social behaviour and violence, the police are able to confiscate alcohol from children and young people intent on drinking in public places and from adults supplying alcohol to child and young people for consumption in public places. They describe this approach as “putting out the fire by removing the fuel”. During these campaigns Strathclyde Police 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.

10. There are existing offences under the Licensing (Scotland) Act 2005, section 105 relating to 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.

11. When Strathclyde Police confiscated the alcohol they found they were powerless to stop those over 18 simply buying and sharing more alcohol which led to a continuing cycle of confiscation and purchasing. The police were unable to take any further action because it is not, in itself, against the criminal law to give alcohol to someone under 18 for consumption in a public place.

12. We believe that the criminal law should make it illegal to supply alcohol to a person under 18 for consumption in a public place. This may be achieved either through the creation of a new specific offence or adapting the existing section 105 offence contained within the 2005 Act. We consider that the law should not make any exemptions. This would assist in addressing under-age drinking.

13. Such a change would, for example, criminalise parents who served alcohol to their children at, for example, family picnics in public places. However we would expect that police and prosecutors would use their discretion to avoid over-zealous enforcement.

Proposal 1

1. Criminalise supplying alcohol to a person under 18 for consumption in a public place.

Questions

2. Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?

3. Are there specific circumstances in which this should not be illegal?

Proposal 2 - Restrictions where disorder is likely to occur – Police powers

14. The Joint Action Group (JAG) on Football has agreed that alcohol fuels much of the violence and disorder associated with football and felt that more needs to be done to restrict access to alcohol before, during and after football matches. The JAG proposed the introduction of legislation similar to the Licensing Act 2003 section 160, (effective in England and Wales) which would allow a senior police officer to apply to a court requesting the imposition of restrictions on licensed premises within an area where disorder is likely to occur, for example within the vicinity of a football stadium before, after and during a high risk match.

15. Section 160 of the Licensing Act 2003, provides police officers in England and Wales with the power to apply to court for an order requiring all licensed premises which are situated at or near the place of disorder, or anticipated disorder, to be closed for a period of up to 24 hours. The guidance supporting this legislation highlights that events which might justify action under section 160 could include football fixtures with a history of public order problems. When seeking an order under section 160, the burden of proof falls on the police to satisfy the court that their intelligence or evidence is sufficient to demonstrate that such action is necessary.

16. The aim of the proposal is to reduce availability of alcohol around events such as football matches and therefore to have an impact on reducing alcohol-related disorder. It may also help with dispersal of supporters following a football match – something which the police have highlighted as an issue. The proposal could also be applied to marches or other events likely to be associated with significant disorder. It is recognised, however, that this proposal would raise significant concerns amongst establishments located close to some football grounds.

17. Currently in Scotland, police have the powers, under section 97 of the Licensing (Scotland) Act 2005, to apply to a Licensing Board to close individual licensed premises in the interests of public safety. This proposal would extend beyond individual premises to cover all the premises in a specified geographical area.

Proposal 2

Give the police powers to impose restrictions on licensed premises, both the on and off trade, within an area where disorder is likely to occur

Questions

- 4. Does section 97 form a suitable basis on which to provide extended police power?**
- 5. Should the procedure under s97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?**
- 6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors' boxes/corporate hospitality, etc.?**

Proposal 3 - Restrictions where disorder is likely to occur – Licensing Board powers

18. The Joint Action Group (JAG) on Football also proposed that Boards should be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches

19. There would have to be significant risk before this proposal was utilised. The aim of this recommendation is to help to reduce availability of alcohol around football matches.

20. Section 10 of the Alcohol etc. (Scotland) Act 2010 inserted a new section 27A into the 2005 Act which enabled Licensing Boards to vary the conditions of individual premises licences in respect of all the premises in its area or vary a group of licences in respect of matters prescribed by the Scottish Ministers. A Board will only be able to exercise the power if it considers it necessary or expedient for the purposes of any of the licensing objectives and in relation to matters prescribed in regulation. Scottish Ministers could therefore lay regulations to allow Boards to restrict opening hours in relation to specified matters. Section 27A requires Boards to publish a notice of any proposed variation, stating that any persons may make representations to the proposed variation and these would trigger a hearing.

21. The time required by these procedures make it unlikely that section 27A could be used for an imminent match. However a condition could be applied relating to all matches, home matches, derby matches, or other event likely to trigger disorder, provided a clear definition could be provided.

22. It would be exceedingly difficult for a Board to devise a condition that served the intended purpose, without being unduly onerous. Once the condition is imposed, it could not easily be changed or relaxed, and a breach would be an offence.

Proposal 3

Boards should be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches or other events likely to be associated with disorder

7. Should Boards be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?

8. Do you have concerns about this proposal, and if so, what are they?

Proposal 4 - Variation of local licensing conditions

23. As detailed above at Proposal 3, section 10 of the Alcohol etc. (Scotland) Act 2010 inserted a new section 27A into the 2005 Act which enabled Licensing Boards to vary the conditions of premises licences in respect of all the premises in its area or vary a group of licences, in respect of matters prescribed by the Scottish Ministers.

24. Section 27A as introduced prevents Boards from attaching conditions unless they are prescribed by Scottish Ministers.

25. Whilst it may be possible for Ministers to prescribe a wide range of conditions this potentially prevents Boards from dealing with issues at a local level. It is therefore proposed to remove the restriction to matters prescribed by Scottish Ministers.

26. We would expect that any introduction of blanket conditions would still have to be subject of consultation, and the usual constraints, for example those at section 27(7) and should ultimately be included within a Board's Statement of Policy.

27. Although it would be open to the Board to carry out what is in effect a 'bulk update' of premises licences, any changes to the legislation would need to ensure that licence holders retained the ability to require a hearing to consider the variation, and possibly a right of appeal to the Sheriff. The Board would also need to ensure that existing premises licences were physically updated, to ensure that up-to-date copies were held on licensed premises.

Proposal 4

Enable Licensing Boards to apply new local licensing conditions to all existing licensed premises without the need to update individual licences.

Questions

9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?

10. What procedure should apply before such conditions are applied and what rights of appeal would be appropriate?

Proposal 5 - Fit and proper

28. Many licensing regimes rely on a 'fit and proper' test as to whether someone is suitable to hold a licence. Indeed the previous alcohol licensing regime included a 'fit and proper' test. There is no 'fit and proper' test under the 2005 Act, various other tests are applied, for example in relation to a premises licence the Chief Constable may object that the applicant is involved in 'serious organised crime', while in relation to both the premises and personal licence the Chief Constable should advise whether the applicant has been convicted of any relevant offence or foreign offence.

29. The current system of relevant offences is complicated and difficult for members of the trade to understand without some form of legal assistance. The increased use of "alternatives to prosecution" and "non court disposals" specifically in relation to licensing offences, is having a direct impact on the ability of the police to present relevant information to Boards.

30. It is argued that returning to a 'fit and proper' test would give the police greater scope to present information to Boards, and give Boards the ability to consider a greater breadth of relevant information when determining a licence application.

Proposal 5

Allow Boards to consider whether an applicant is a 'fit and proper' person to hold a licence.

Questions

11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a 'fit and proper' person?

12. Should there be a definition of 'fit and proper' and if so, what should it consist of?

Proposal 6 - Promotion of the licensing objectives

31. This is a recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) in their report “Rethinking Alcohol Licensing” published September 2011 to place a statutory obligation on licensing boards to promote the licensing objectives.

32. The 2005 Act provides that central to the licensing of alcohol in Scotland are five “licensing objectives”.

- (a) preventing crime and disorder,
- (b) securing public safety,
- (c) preventing public nuisance,
- (d) protecting and improving public health, and
- (e) protecting children from harm.

33. At present the objectives provide the basis for various Board decisions and should be promoted in their licensing policy statements. It is argued that further strengthening this to require Boards to promote the licensing objectives would ensure that the objectives are promoted each time that the Board exercises its functions under the Act.

34. This would be akin to the position in the Licensing Act 2003 for England and Wales.

Proposal 6

Place a statutory obligation on Licensing Boards to promote the licensing objectives.

Questions

13. Should Boards be placed under a statutory obligation to promote the licensing objectives?

14. What impact would this have on the work of Boards

Proposal 7 - Statutory duty on boards to report

35. As an extension of the above proposal to require Boards to promote the licensing objectives, Alcohol Focus Scotland have also proposed that Boards be put under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives.

36. Licensing Boards already provide annual statistics to Scottish Government. This collection of information could be expanded to include Board reports, or they could be submitted separately.

37. If it is decided to proceed, then it would be necessary to decide what format the Board reports should take and what information they should include.

38. Local Licensing Forums are already able to ask for information and statistical data on the Board's functions and they should be best placed to question the operation of Boards. At least once in each calendar year the Licensing Board must have a joint meeting with the Local Licensing Forum.

39. At present there is not a statutory obligation on Boards to provide statistics to the Scottish Government. It would be possible to make this a statutory requirement.

Proposal 7

Boards be put under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives

Questions

15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?

16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?

Proposal 8 - Statutory duty on boards to gather and assess information

40. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on alcohol Problems (SHAAP). It is proposed that a statutory duty be placed on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy.

41. It is argued that this would place beyond doubt that a Licensing Board should gather sufficient information to formulate its policy. Imposing a statutory duty on boards to gather and assess information on each of the five licensing objectives would help ensure that Boards' policies were based on the best available evidence and, in theory, were less likely to be successfully challenged.

Proposal 8

Place a statutory duty on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy

Questions

17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?

18. What benefits would such a statutory duty bring?

Proposal 9 - Extend period of statement of licensing policy

42. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP). It is proposed to extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period.

43. At present every Board must, before the beginning of each 3 year period, publish a statement of licensing policy on their functions under the Act. In preparing the statement, the Licensing Board must ensure that the policy stated in the statement seeks to promote the licensing objectives. At present there is no sanction for not publishing a statement of licensing policy, but it does support the work and decisions of the Board.

44. Under the current arrangements, a licensing policy statement has to be subject to a full consultation. This consultation would not prevent a legal challenge during the course of its life in respect of an individual application or subsequent appeal. It could be argued that a process which is continuously under threat of legal challenge does not serve the public interest. The introduction of a statutory ouster clause may limit the number of appeals against an adopted licensing policy statement.

45. This proposal could also link the review period to that of local authority elections, for example such that the new Board had to prepare a new policy statement within a year of being appointed, and once agreed it would have a duration of five years. There would remain an ability to make changes during the life of a policy statement by way of a supplementary statement.

46. A statutory ouster clause presently applies under section 237 of the Town and Country Planning (Scotland) Act 1997 and provides that parties have six weeks to challenge an adopted local plan. If licensing is to be a policy led system then a statutory ouster clause similar to the planning regime may well be necessary. However, if adopted, the consultation and advertisement requirements forming part of the policy statement procedure may need to be strengthened.

Proposal 9

Extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period.

Questions

- 19. Should the period that a statement of licensing policy is in force be extended to five years?**
- 20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?**

10. Consideration of English Language ability

47. At present there is no language requirement in relation to alcohol licensing. Although a personal licence holder must sit and pass a Personal Licence Holder Qualification, it can, at present, be provided and examined in languages other than English.

48. A personal licence authorises a person to supervise or authorise the sale of alcohol. Most staff training is provided by a personal licence holder. However it is not a requirement in the legislation for there to be a personal licence holder on the premises at all times.

49. Concerns have been raised that where personal licence holders are not readily able to understand English, then they will find it difficult to understand, comply with and apply the requirements in relation to alcohol licensing.

50. It is possible that such premises would eventually be subject to enforcement action, for example through failing a test purchase, but this is a poor outcome for the trader, the public, and a poor reflection on the licensing regime itself.

51. We would like to gauge how much of a concern this actually is, and consider options to address it. The Scottish Government and local authorities remain committed to ensuring that there are not unreasonable barriers to businesses trading, and that where any additional requirements are imposed they are set at a level necessary to protect the public, without seeking to impose an undue burden. It has, for example, been suggested that it is required that the Personal Licence Holder Qualification must be taken in English, or include some test for English proficiency. A more onerous alternative would be for there to be a mandatory condition that there is someone on the premises with a reasonable command of English at all times.

Proposal 10

Measures to ensure that licence holders have a reasonable command of English.

Questions

21. Is there currently an issue with licence holders who do not have a reasonable command of English.

22. If there is a problem, what would be your preferred means to address this?

Chapter 3 - Proposals to improve the effectiveness of the licensing regime

11. Brightcrew - Address the uncertainties highlighted by the 2011 decision in Brightcrew Ltd v City of Glasgow Licensing Board.
12. Members' Clubs - Concerns have been raised that some members' clubs, which enjoy a less onerous regime, are abusing either the letter or the spirit of the rules by operating in direct competition with local licensed premises.
13. Concerns have been expressed about procedures at licensing board meetings.
14. Develop a national licensing policy statement that local licensing boards are required to have regard to when drawing up their own policies.
15. Amend the licensing objective in the 2005 Act from "protect children from harm" to state "children and young persons".
16. Interested parties - The Law Society raised concerns that legislation intended to require notification of those connected to a premises licence, was too broadly drafted and would inadvertently criminalise many premises licence holders.
17. Amend section 7 of the 2005 Act, the duty to assess overprovision, to state that the locality for assessment of overprovision can be the entire board area.
18. Amend section 7 of the 2005 Act to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises, and include opening hours in the assessment of overprovision.
19. Address concerns over internet sales by extending promotions ban to cover orders dispatched from England but which were 'taken' in Scotland.

20. Clarify the specific circumstances under which alcohol can be sold in garage forecourts.

21. Timing of Board training

Proposal 11 - Brightcrew

52. The decision of the Court of Session in the case of *Brightcrew Limited v Glasgow Licensing Board* has potentially important implications for the operation of the licensing system. The case centred on the ability of the Board to refuse an application for a premises licence from a lap dancing club. The grounds of refusal cited by the Board were incompatibility with two licensing objectives (public health and preventing crime and disorder). The refusal was based upon incompatibility with the Board's policy on adult entertainment, particularly with regard to the health and safety of the dancers.

53. An Extra Division of the Inner House allowed the appeal from *Brightcrew*. It held that the essential function of the 2005 Act is that of the licensing of the sale of alcohol. Since the licensing with which the Act is concerned is the licensing of the sale of alcohol, inconsistency with a licensing objective means inconsistency flowing from the permitting of the sale of alcohol on the premises. Whilst the objectives contained in the Act were desirable in a general sense, that did not empower a licensing board to insist on matters which, while perhaps unquestionably desirable in that sense, are nevertheless not linked to the sale of alcohol.

54. In other words, the Board was not entitled to refuse to grant a licence on the basis of breaches of its Code of Practice where the provisions breached did not relate to the sale of alcohol.

55. The implications of this decision are open to dispute, and further court judgements would be required to provide greater clarity of interpretation of the existing legislation. Some argue that *Brightcrew* does not have profound implications as long as Boards have clear and evidenced licensing policy statements, whereas we understand that some Boards are now cautious about taking cognisance of factors such as noise complaints, fights, and other disturbances because they are not directly concerned with the sale of alcohol. Some Board decisions not to take action seem to be based upon a fear of challenge in the courts.

Proposal 11

Address the uncertainties highlighted by the Brightcrew decision

Questions

- 23. Would expanding the scope of the Act from 'sale' to 'sale and supply' address the uncertainties created by Brightcrew?**
- 24. Would placing a general duty on Boards to 'promote' rather than 'have regard' to the licensing conditions address the uncertainties created by Brightcrew?**
- 25. Would making clear that the Act allows regulation of the sale of alcohol *or other activities* in the licensed premises within licensed hours address the uncertainties created by Brightcrew?**
- 26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?**

Proposal 12 – Members’ clubs

56. Concerns have been raised that some members’ clubs, which enjoy a less onerous regime, are abusing either the letter or the spirit of the rules by operating in direct competition with local licensed premises.

57. The reasons that clubs have special arrangements under the Licensing (Scotland) Act 2005 remain valid. They exist principally for the benefit of their members and are not commercial enterprises that are open to members of the public. They also play a valuable part in community life in providing a range of sports and social activities.

58. Clubs want to retain their special status, whilst the mainstream trade wants to ensure that individual clubs are not abusing that status. The main complaint is that some clubs are acting commercially, by allowing entry to non-members, and have an unfair advantage over the mainstream licensed trade, the latter being more strictly regulated and not enjoying the same privileges and exceptions. Boards have expressed concern that the Act as it currently stands prevents them from dealing effectively with the minority of members’ clubs that appear to be abusing the system.

59. Minor changes to legislation might allow Boards to discharge their duty more effectively.

60. Constitutions of clubs have to contain a set of rules, but Licensing Boards have no actual power to demand a copy of the constitution. Clubs can change a constitution without notifying a Board. The constitution does not form part of the licence or its conditions, so breaching the constitution does not breach the licence.

61. There is currently no sanction for clubs operating in what would appear to be a commercial nature and there are no grounds upon which to call for a review of the premises licence.

62. It is proposed to incorporate the constitution into the main operating plan or to make adhering to the constitution a mandatory condition in terms of the mandatory clubs provisions. Any breach of the relevant provisions within the constitution relating, to the

sale of alcohol, would then be a breach of licence and could be subject of review.

63. Whilst this would in effect make clubs more accountable it would also generate more work for Boards.

Proposal 12

Address the concerns that have been raised about members' clubs

Questions

27. Do you agree that there should be additional restrictions on the operation of members' clubs?

28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence ?

29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?

30. Do you have any other proposals to tighten up the regulation of members' clubs, for example through additional mandatory conditions?

Proposal 13 - Hearings

64. ACPOS and legal agents have expressed concern about procedures and the inconsistency of approach at Licensing Board meetings and in particular the conduct of hearings. With the move to a single police force and legal agents operating across multiple Board areas a more standardised approach could reduce unnecessary burdens.

65. A Licensing Board is considered to be an administrative decision-maker, it is not a judicial tribunal but it does require to act fairly with the applicant and other parties. Although a Board currently has the freedom to perform its function as it pleases 'in so far as it is not bound by statute' proceedings must be conducted in a quasi judicial manner and with proper regard for the rules of natural justice. This does not prevent the Board carrying out its functions by applying its own expertise to the application.

66. Licensing Boards are made up of local authority councillors (minimum of 5, maximum of 10) and have considerable autonomy in the approach they adopt. Accordingly, there are wide variations in the degree of formality, how written and oral evidence is taken and considered, and how decisions are made. Whilst a Licensing Board meeting must be held in public, in the interest of natural justice, it is known that some proceedings are held in private

67. In the main, Boards examine and approve licence applications, they can also carry out reviews where there are concerns. The Board must balance the public interest against the legitimate desires of businesses to open, continue to trade and expand.

68. The local authority must appoint a clerk to the Licensing Board who must be either an advocate or solicitor. The role of the clerk is to provide legal guidance and support.

69. Neither the 2005 Act nor guidance currently give direction in respect of how hearings should be conducted. However the Scottish ministers may by regulation make provision as to the procedure to be followed at or in connection with any alcohol licensing hearing to be held by a licensing board. These provisions may include:

- Notification of hearings

- Rules of evidence, which are to be applied for the purposes of the hearing
- Representation of any party at the hearing
- Timescales by which steps in the procedure must be taken
- Liability for expenses
- The times by which applications to a Board under this Act, and other business to be considered by a Board, are to be determined or considered
- The publicising of meetings of a Board
- Public access to any agenda and record or, and other information concerning, a meeting of a Board

70. Some legal agents are arguing for boards to adopt procedures and rules of evidence akin to those used in courts rather than the current more informal approach. They argue that the introduction of ‘evidential hearings’ would allow them to “properly test” the material presented by an objector or complainer.

71. In relation to objectors there can also be issues of fairness where an objector is required to state their grounds in advance, but the licence holder can present new material at any time. Objectors may not be given the opportunity to rebut the new material and have no right of appeal.

72. Clerks to Boards have voiced some concern about ECHR considerations, the requirement to hold hearings for decisions which could be better addressed by officials through delegated authority and additional powers that they believe would improve the operation of the Act

73. Finally Licensing Boards are not, nor were meant to be operated as courts. The rationale behind this is that the Licensing Board, which has a quasi-judicial function, should be seen as a separate entity from the criminal proceedings, and as in a Civil Court has different standards of proof – ‘balance of probability’ as opposed to ‘beyond all reasonable doubt’.

74. It is entirely a matter for the Licensing Board to decide what evidence or information it accepts or rejects. They have a duty to consider all information put before it. That information and or evidence can include details of behaviour and conduct whether it is associated with criminality or not. However, the Licensing Board

must consider the admissibility, relevance and weight to be given to each item of evidence.

75. Local councillors generally have no legal training in the rules of evidence and may not be best placed to deal with more court like 'evidential hearings'. The Act does not provide for witnesses to be put on oath or cross examined, which may well call into question the credibility of the evidence presented. Objectors, including the police are not normally represented by legal agents. With a shift to 'evidential hearings' this may have to change, which would come at considerable expense. Hearings would be likely to take considerably longer than at present and this would lead to increases in licensing fees so that boards could recover their costs. For these reasons we are not currently convinced of the case for 'evidential hearings'.

76. However administrative inconvenience, in itself, cannot be accepted as a valid excuse for failure to comply with the requirements of natural justice

77. The Act entrusts the administration of the licensing system to Licensing Boards and is designed to protect the local community and general public where problems associated with the licensing objectives occur. Licensing Boards are or should be best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas.

78. It was always envisaged that the Licensing Board would use the hearing process effectively to deter crime and disorder and address issues around premises and individuals failing to comply with the licensing objectives

Proposal 13

Address concerns about procedures at Licensing Board hearings.

Questions

- 31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?**
- 32. Can you provide examples of particularly good or bad practice at board hearings?**
- 33. Should Board meetings be held in public, in their entirety?**
- 34. What other issues should be considered for inclusion in any guidance on board procedures and why ?**

Proposal 14 - National policy statement

79. Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) recommended the development of a national licensing policy statement that local Licensing Boards should be required to have regard to when drawing up their own policies.

80. A national policy statement could benefit local Licensing Boards and help them to integrate local and national strategies for managing alcohol related problems.

81. For a national licensing policy statement to have an impact it would require some statutory basis. However given the very wide variations between the different Scottish communities the statement would have to be fairly high level and as a result might not have much real impact.

82. Licensing Boards and clerks have expressed concern that the introduction of a national policy would erode their policy making and discretion.

Proposal 14

Develop a national licensing policy statement that local Licensing Boards are required to have regard to when drawing up their own policies.

Questions

35. Should the Scottish Government introduce a national licensing policy statement and why ?

36. What sort of issues should such a statement cover ?

Proposal 15 - Amend the licensing objective to protect children and young persons from harm

83. Section 147 of the 2005 Act defines a child as “a person under the age of 16” and a young person as “a person aged 16 or 17”. Thus the ‘protecting children’ objective does not apply to 16 and 17 year olds. The distinction between children and young persons creates difficulties for Licensing Boards when dealing with issues around young persons. For example it means that any action the Board take in relation to test purchase failures have to be considered in regards the crime prevention objection as opposed to the children objective. Equally when considering areas set aside for children and young persons within premises, it is difficult to relate to this to the objectives especially in respect of young persons

84. The broadening out of the objective would give Licensing Boards greater scope when considering the wider implications of young persons access to alcohol.

85. The current section 110 notice is inaccurate as it does not fully reflect the rules, it is proposed to update it.

86. Another proposal is to strengthen the current mandatory condition in relation to Challenge 25 which currently only requires that there is an age verification policy in relation to the sale of alcohol on the premises. It is proposed that this be expanded to also require that the age verification policy be adhered to.

Proposal 15

Amend the licensing objective in the 2005 Act from “protect children from harm” to state “children and young persons from harm”.

Questions

37. Should the licensing objective be amended to say “protect children and young people”?

38. Does the current mandatory condition in relation to Challenge 25 create difficulties?

Proposal 16 - Interested parties

87. The Criminal Justice and Licensing (Scotland) Act 2010, at section 184, proposed that a premises licence holder be under a duty to notify their licensing board if a person becomes or ceases to be a connected person or interested party. This was to respond to concerns that the holders of premises licences were failing to advise Boards of connections with, for example, organised crime. Criminal sanctions would apply for a failure to notify.

88. However the Law Society raised concerns that this provision is too vague and too broad to be practical. If the premises licence is held by a tenant of large chain such as Punch Taverns and there is a change on the Board of Punch does that have to be notified? If, as happens in the current economic circumstances, the ownership passes from a defaulting company to the bank who then sell it on to a private equity firm who parcel it up in a property portfolio that is sold to a pension fund, is a tenant going to keep up and notify at every stage?

89. In order to respond to these concerns the Scottish Government have held off bringing this provision into law, that is it is still to be commenced. We are considering options to make the provision more effective before it is brought into effect.

90. One proposal is to amend the duty to read that, 'when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....'

91. Alternatively we could adopt the approach of the Civic Government (Scotland) Act 1982 Schedule 1, paragraph 5 (3)(b) whereby "The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself".

92. Concerns have also been raised by ACPOS about a conflict with another provision within the Criminal Justice and Licensing (Scotland) Act 2010. These are not yet an issue, as the provision for interested parties has not yet been brought into law. However if it were commenced as currently drafted then it would have the unintended consequence that a premises manager would no longer have vicarious liability. Vicarious liability is where a

person is deemed to be liable for the offences committed by employees.

93. Within section 184, which inserts section 40A into the 2005 Act, an interested person is defined as a person who is not the premises licence holder and is not the premises manager. This has not yet been commenced.

94. However within s195, vicarious liability (responsibility for the offences of employees) is applied to the premises licence holder or an interested party. But as explained above s40A specifically excludes the premises manager from the definition of an interested person, the effect is that the premises manager would not have vicarious liability for the offences of employees.

Proposal 16

Address concerns that legislation intended to require notification of those connected to a premises licence, was too broadly drafted and would inadvertently criminalise many premises licence holders.

Questions

39. Do you agree that the duty as presently drafted is unworkable and why ?

40. (a) Do you prefer the proposal that the duty should be amended to read that

‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....’

(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982

“whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

(c) Alternatively do you have any other suggestions?

41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees ?

Proposal 17 - State that the locality for assessment of overprovision can be the entire board area

95. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP).

96. The 2005 Act places a duty on Licensing Boards to make an assessment of overprovision in any locality within the Boards' area. It is suggested that the use of the term "within" is taken as indicating that the area for the assessment of overprovision cannot therefore be the entire Board area. It is argued that this presents a 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.

97. Boards have struggled to identify locality for overprovision areas and questioned the ability to declare an entire Board area overprovided for. In respect of the Public Health objective, in the absence of a whole population approach over a wider geographical area it is difficult to make a case and almost impossible to relate public health data to individual premises. In terms of the public health objective it is very difficult, if not impossible in most cases to make a causal link between where alcohol is sold and where it is consumed.

Proposal 17

Amend section 7 of the 2005 Act, the duty to assess overprovision, to state that the locality for assessment of overprovision can be the entire board area.

Questions

42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?

43. Would this make it easier for Boards to assess overprovision?

Proposal 18 - Clarify that overprovision can include an increase in capacity

98. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP).

99. It is argued that when considering overprovision this should be made in the widest possible sense. The Act should therefore also explicitly afford an opportunity to consider overprovision in terms of increased hours and capacity within licensed premises.

100. Allowing Boards to consider overprovision in terms of capacity and not just the number of premises would, for example, allow Boards to consider in the round the total off-sales shelving capacity in their area, or the total aggregate opening hours in the on-trade. This total capacity would have to be considered not just in terms of new premises applications, but taking account of any variations or premises that have ceased to trade.

101. To date, boards have adopted different approaches to capacity especially in respect of off-sales premises. They have measured capacity in terms of linear, square, cubic, metres and as a percentage of trading space.

102. The problem is further exacerbated by the interaction between On and Off sales premises. Not all Boards record off-sale capacity in respect of on-sales premises.

Proposal 18

Clarify that overprovision can include an increase in capacity where there is no increase in the number of premises, and include opening hours in the assessment of overprovision.

Questions

44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?

Proposal 19 - Tackle internet sales

103. Section 139 regulates the remote sales of alcohol (internet sales). The section applies where, in connection with any sale of alcohol, the premises from which the alcohol is dispatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken. Where the premises from which the alcohol is dispatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.

104. The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of alcohol orders in Scotland for dispatch from premises out with Scotland, but is then delivered in Scotland.

105. Following the introduction of Alcohol etc. (Scotland) Act 2010 concern was raised regarding supermarkets or other businesses taking orders in Scotland for the purchase of alcohol but then dispatching the order from premises out with Scotland. It was suggested that this practice would avoid the minimum pricing legislation and would allow supermarkets to continue with 3 for 2 type drink promotions etc.

106. Where sales are made in Scotland but dispatched from out with they could be controlled by way of regulation. However there could be considerable difficulties for police and local authorities in seeking to enforce such regulations.

Proposal 19

Address internet sales by extending the Scottish measures such as the multibuy promotions ban to cover orders dispatched from England but which were 'taken' in Scotland.

Questions

45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?

46. If this were introduced, would the police and local authorities be able to carry out meaningful compliance and enforcement action?

Proposal 20 - Garage forecourts

107. Clarify the specific circumstances under which alcohol can be sold in garage forecourts.

108. The legislation in relation to garages is under excluded premises at section 123, and is complicated. Although a premises licence should not be granted to a garage, it can be granted where local residents depend on it for a variety of reasons. This protects rural garages, or urban garages that provide an important local service. This has proven difficult to interpret and apply in practice, and many garages now hold premises licences. With most people already driving to do their shopping, it could be argued that the need to stop garages from selling alcohol has been lessened.

109. Another form of excluded premises is a motorway service station. It is proposed to review and update the current definition of a motorway service station.

110. Both these proposals would relate to applications for new licences, rather than to existing premises licences.

Proposal

Clarify the specific circumstances under which alcohol can be sold in garage forecourts.

Questions

47. Should all garages be refused a premises licence?

48. What, if any exemptions should apply?

49. Can you suggest an alternative approach which would address concerns?

Proposal 21 – Timing of Board training

111. After the 2012 local government elections concerns were raised by some Licensing Boards and applicants about the timing of hearings.

112. It is a legal requirement that Board members should be trained before they can take part in a Licensing Board. With local government elections scheduled in May, the Licensing Board can be subject to considerable changes. Scheduling training for new members over the summer period can prove challenging, and lead to delays in licence applications being heard. This is a particular issue for those applying for a new premises licence.

113. Many Licensing Board decisions can be dealt with via delegated authority, but not new premises applications or major variations.

114. The Scottish Government recognises that licensing can impose a burden on businesses, and is keen to minimise this.

115. A variety of proposals have been made, for example,

- (a) Allow Board members three months grace to comply with the requirement for training
- (b) Authorise Clerks and Depute Clerks to grant non-contentious new licences and major variations during the three month period, under delegated authority, with an option to have those decisions ratified by the Board at the end of the three month period.

Proposal 10

Flexibility over training requirements for a new Board.

Questions

50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the local government election?

51. If so, what would be your preferred approach to address this issue?

Chapter 4 – Conclusion

116. This consultation covers a wide variety of concerns and suggestions that have been raised by stakeholders on the alcohol licensing regime. There are various other minor issues that the Scottish Government is looking at addressing. For example it is proposed to better align the definition of alcohol within the Licensing (Scotland) Act 2005 with that within the Alcoholic Liquor Duties Act 1979, as amended, by including Angostura Bitters and Black Beers.

117. We would be also interested in your views on whether there are other issues that should be considered for reform ?

52. Do you have further suggestions for reform of alcohol licensing?

Glossary

Alcohol (Minimum Pricing) (Scotland) Act 2012 – The Alcohol (Minimum Pricing) (Scotland) Act 2012 was passed in June 2012 and will pave the way for the introduction of a preferred minimum price of 50p per unit. This is a significant step forward in the Scottish Government's efforts to tackle Scotland's unhealthy relationship with alcohol.

<http://www.legislation.gov.uk/asp/2012/4/contents>

The draft order setting a minimum price of 50p has now been notified to the European Commission. The earliest date for implementation of the minimum price is 2013.

<http://www.legislation.gov.uk/asp/2012/4/contents>

Alcohol etc. (Scotland) Act 2010 – the Alcohol etc. (Scotland) Act 2010 introduced a range of restrictions on promotions, and required licensed premises to have an age verification policy.

<http://www.legislation.gov.uk/asp/2010/18/contents>

Criminal Justice and Licensing (Scotland) Act 2010 – the Criminal Justice and Licensing (Scotland) Act 2010 covered a variety of issues, Part 9 relates to Alcohol licensing, it widened the powers of police and LSOs.

<http://www.legislation.gov.uk/asp/2010/13/contents>

EU Services Directive – transposed into UK legislation by the Provision of Services Regulations 2009, the directive sets out how the internal market in relevant services should operate. The aim is to help open up the internal market in services across the EU, increasing employment opportunities and trade.

<http://www.legislation.gov.uk/uksi/2009/2999/contents/made>

<http://www.bis.gov.uk/servicesdirective>

Fit and Proper test – many licensing regimes include a 'fit and proper' test where the Board determines whether the suitability of the applicant, for example those within the Civic Government (Scotland) Act 1982. The 2005 Act does not include a 'fit and proper' test, in the case of a premises licence, the Board should consider whether the application is inconsistent with one or more of the licensing objectives, and the police must provide the Board

with a notice stating whether the applicant or any connected person has any relevant offences. Relevant offences are detailed in The Licensing (Relevant Offences) (Scotland) Regulations 2007.

JAG on Football - The Joint Action Group (JAG) was established following the Football Summit in March 2011 to develop proposals to deliver the 8 Summit commitments.

The JAG - which had representation from the Scottish Football Association, the Scottish Premier League, the Scottish Football League, Celtic Football Club, Rangers Football Club, Strathclyde Police and the Scottish Government - carefully considered the commitments and has developed proposals to support their delivery. These proposals are set out in the summit report.

<http://www.scotland.gov.uk/Topics/Justice/law/sectarianism-action-1/football-violence/football-summit/JAG>

Licensing (Scotland) Act 2005 – the 2005 Act followed on from the work of Nicholson and Daniels Committees and replaced the Licensing (Scotland) Act 1976. It brought in the Licensing Objectives, and the system of premises and personal licences.
<http://www.legislation.gov.uk/asp/2005/16/contents>

Licensing Act 2003 – the 2003 Act applies to England and Wales and established a single, integrated scheme for licensing premises which are used for the sale or supply of alcohol.

Licensing Board – in technical terms, a Board is a creation separate from the local authority. In practical terms, it consists of local authority councillors, with a local authority clerk, a solicitor or advocate, providing support and legal advice. The Board determines applications, considers variations and holds reviews.

Licensing Conditions – the 2005 Act allows conditions to be attached to a licence (except for a personal licence), there are four types of condition

- Mandatory conditions – set nationally
- Late Opening premises conditions – apply to certain premises that are open after 1am
- Discretionary or pool conditions – suggested conditions that Boards could apply

- Local conditions – set by Licensing Boards, for example ‘childrens conditions’.

Breach of a condition could result in a licence being revoked.

Licensing Forum – each local authority must establish a Licensing Forum, or Forums. The Board is to meet with the Forum at least once each year. The Forum should keep under review the operation of the 2005 Act, the exercise of the Board of their functions, and give advice or recommendations as they feel appropriate.

Licensing Objectives – the 2005 Act set out five licensing objectives, which underpin the Licensing Boards in the discharge of their functions. The five licensing objectives are

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

LSOs – Licensing Standards Officers are appointed by the local authority for the regulation of the licensed trade. They provide information and guidance, supervise compliance and provide mediation services.

Off-trade – premises that are authorised to sell alcohol for consumption off the premises, such as shops and off-licences

On-trade – premises that are authorised to sell alcohol for consumption on the premises, such as restaurants, bars and pubs.

Personal Licence Holder – under the 2005 Act, each sale of alcohol under a premises licence, must be made under the authority of a personal licence holder.

Premises Licence – a premises licence conveys the ability to sell alcohol from the premises to which the licence relates. The premises licence must specify a premises manager.

Overprovision – every statement of licensing policy published by a Licensing Board must include an statement as to the extent to

which the Board considers there to be overprovision.
Overprovision is a ground for refusing a premises licence.

Reviews – any person may request the review of a premises licence, the grounds for review are that there has been a breach of a condition or any other ground relating to one or more of the licensing objectives. If the Board accepts the review application, then they must hold a hearing. Following the hearing they can issue a written warning, make a variation to the licence, suspend the licence, revoke the licence, or take no action.

Statement of Licensing Policy – it is a statutory requirement for Boards to prepare a statement of licensing policy, which should promote the licensing objectives. This should include a statement as to the extent to which the Board considers there is overprovision of licensed premises, or licensed premises of a particular type.

ANNEX A: RESPONDING TO THE CONSULTATION

Please send your response with the completed Respondent Information Form (at ANNEX C) to:

licensing.consultation@scotland.gsi.gov.uk

or

Peter Reid
Licensing Team
2W St Andrew's House
Regent Road
Edinburgh
EH1 3DG

If you have any queries contact Peter Reid on 0131 244 4533

The deadline for responding is **Friday 21 March**.

We would be grateful if you would use the consultation questionnaire provided (at ANNEX C) or could clearly indicate in your response which questions you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at:

<http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations:

<http://register.scotland.gov.uk>.

This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form, which forms part of the consultation questionnaire, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on any changes to alcohol licensing. We aim to issue a report on this consultation process in Summer 2013.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Peter Reid using the details above.

ANNEX B: THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at:

<http://www.scotland.gov.uk/consultations>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation

exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

ANNEX C: CONSULTATION QUESTIONNAIRE

Further options for alcohol licensing – consultation paper

RESPONDENT INFORMATION FORM

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

1. Name/Organisation

Organisation Name

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

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual

Please tick as appropriate

Group/Organisation

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

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

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

or

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

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

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

Please tick as appropriate Yes No

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

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

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

1. **Are you responding as an;**
- (a) individual
 - (b) primarily on-trade business
 - (c) primarily off-trade business
 - (d) members' club
 - (e) local authority
 - (f) another business or organisation, please specify

Comments

2. **Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?**

Yes No

Comments

3. **Are there specific circumstances in which this should not be illegal?**

Yes No

Comments

4. **Does section 97 form a suitable basis on which to provide extended police power?**

Yes No

Comments

5. **Should the procedure under section 97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?**

Yes No

Comments

6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors' boxes/corporate hospitality, etc.?

Yes No

Comments

7. Should Boards be able to impose additional conditions to apply variations to opening hours, for some or all licensed premises, to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?

Yes No

Comments

8. Do you have concerns about this proposal, and if so, what are they?

Yes No

Comments

9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?

Yes No

Comments

10. What procedures should apply before such conditions are applied and what rights of appeal would be appropriate?

Comments

11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a 'fit and proper' person?

Yes No

Comments

12. Should there be a definition of 'fit and proper' and if so, what should it consist of?

Yes No

Comments

13. Should Boards be placed under a statutory obligation to promote the licensing objectives?

Yes No

Comments

14. What impact would this have on the work of Boards?

Comments

15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?

Yes No

Comments

16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?

Yes No

Comments

17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?

Yes No

Comments

18. What benefits would such a statutory duty bring?

Comments

19. Should the period that a statement of licensing policy is in force be extended to five years?

Yes No

Comments

20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?

Yes No

Comments

21. Is there currently an issue with licence holders who do not have a reasonable command of English?

Yes No

Comments

22. If there is a problem, what would be your preferred means to address this?

Comments

23. Would expanding the scope of the Act from 'sale' to 'sale and supply' address the uncertainties created by Brightcrew?

Yes No

Comments

24. Would placing a general duty on Boards to 'promote' rather than 'have regard' to the licensing conditions address the uncertainties created by Brightcrew?

Yes No

Comments

25. Would making clear that the Act allows regulation of the sale of alcohol or other activities in the licensed premises within licensed hours address the uncertainties created by Brightcrew?

Yes No

Comments

26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?

Comments

27. Do you agree that there should be additional restrictions on the operation of members' clubs?

Yes No

Comments

28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence?

Yes No

Comments

29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?

Yes No

Comments

30. Do you have any other proposals to tighten up the regulation of members' clubs, for example through additional mandatory conditions?

Yes No

Comments

31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?

Yes No

Comments

32. Can you provide examples of particularly good or bad practice at Board hearings?

Yes No

Comments

33. Should Board meetings be held in public, in their entirety?

Yes No

Comments

34. What other issues should be considered for inclusion in any guidance on Board procedures and why?

Comments

35. Should the Scottish Government introduce a national licensing policy statement and why?

Yes No

Comments

36. What sort of issues should such a statement cover?

Comments

37. Should the licensing objective be amended to say “protect children and young people”?

Yes No

Comments

38. Does the current mandatory condition in relation to Challenge 25 create difficulties?

Yes No

Comments

39. Do you agree that the duty as presently drafted is unworkable and why?

Yes No

Comments

40. (a) Do you prefer the proposal that the duty should be amended to read that

‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....’

(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982

“whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

(c) Alternatively do you have any other suggestions?

Comments

41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees?

Yes No

Comments

42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?

Yes No

Comments

43. Would this make it easier for Boards to assess overprovision?

Yes No

Comments

44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?

Yes No

Comments

45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?

Yes No

Comments

46. If this were introduced, would it be possible for the police and local authorities be able to carry out meaningful compliance and enforcement action?

Yes No

Comments

47. Should all garages be refused a premises licence?

Yes No

Comments

48. What, if any exemptions should apply?

Comments

49. Can you suggest an alternative approach which would address concerns?

Comments

50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the Local Government elections?

Yes No

Comments

51. If so, what would be your preferred approach to address this issue of alcohol licensing?

Comments

52. Do you have further suggestions for reform?

Comments

ANNEX D: LIST OF CONSULTEES

Responses to this consultation are welcome from any individual or organisation with an interest. The following will be sent a copy of the consultation directly:

ACPOS (Association of Chief Police Officers Scotland)
Alcohol Focus Scotland
All Scottish Local Authorities
All Scottish MEPs
Capability Scotland
Clerk of the Justice Committee of the Scottish Parliament
Clerk of the Local Government and Regeneration Committee of the Scottish Parliament
Consumer Focus Scotland
COSLA (Convention of Scottish Local Authorities)
Departmental Committee Liaison Officer
Equality and Human Rights Commission
Federation of Small Businesses
Law Society of Scotland
NHS Health Scotland
Scottish Beer and Pub Association
Scottish Centre for Social Research
Scottish Crime and Drug Enforcement Agency
Scottish Government Alcohol Industry Partnership
Scottish Government Library
Scottish Grocers' Federation
Scottish Health Action on Alcohol Problems
Scottish Human Rights Commission
Scottish Licensed Trade Association
Scottish Retail Consortium
Scottish Wholesale Association
SOLAR (Society of Local Authority Lawyers and Administrators Scotland)
SPICe (Scottish Parliament Information Centre) library
The 6 Legal Deposit or 'Copyright' libraries
The 8 Scottish Police Forces
Wine & Spirits Trade Association



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Currie, Fiona

From: patrhanson@aol.com
Sent: 13 February 2013 10:10
To: Currie, Fiona
Subject: Fwd: SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM

-----Original Message-----

From: patrhanson <patrhanson@aol.com>
To: stephen.mcgowan <stephen.mcgowan@tltsolicitors.com>
Sent: Fri, 18 Jan 2013 12:04
Subject: Re: SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM

Hi Stephen

Congratulations on your election and the high profile you are adopting!

Here are my views on the Scottish Government consultation:

Prop 1

Q2 Yes

Q3 No

Prop 2

Q4 Yes

Q5 No - complete overkill

Q6 Not relevant unless extended closures are allowed

Prop 3

Q7/8 I can't see how this takes us forward. This is just as 'onerous' as the current situation which appears to be described in para 22

Prop 4

Q9/10 No comment

Prop 5

Q11 OK with this

Q12 Of course there should be some guidance on 'fit and proper'. Perhaps we can check to see what other licensing regimes use.

Prop 6

Q13/14 I see no reason to change the current wording. It's not the Licensing Board's job to actively PROMOTE the 5 objectives but they will govern all their decisions and the actions of licence holders. This is the health lobby looking for tame agents all over Scotland.

Prop 7

Q15/16 Not relevant assuming that the requirement to 'promote' is not inserted!

Prop 8

Q17 Fairly non-controversial

Q18 Might help to improve Boards' statements of licensing policy

Prop 9

Q19/20 Totally unnecessary tinkering with a system that's working OK

Prop 10

Words fail me. Para 10: 'concerns have been raised' - by whom? They are happy to name AFS, SHAAP etc elsewhere. Totally unnecessary nit-picking

Prop 11

Q23 Possibly
Q24 No
Q25 Other activities ARE ALREADY COVERED eg in the operation plan attached to the premises licence
Q26 Not really

Prop 12
Q27 No
Q28 One factor amongst many
Q29 Can't see any objection
Q30 Licensing Boards are quite capable of doing this under current legislation eg when faced with applications from clubs for 'open licences'

Prop 13
This is long-winded in the extreme. In respect of Q33, I suggest that there should always be provision for certain LB matters to be heard in private eg when discussing specific personal licence issues.

Prop 14
Q35 No. This is just an excuse for AFS, SHAAP etc to attempt to exert extra national influence, knowing that they can't easily do it locally.
Q36 N/A

Prop 15
Q37 Yes
Q38 No

Prop 16
Q39 Not really
Q40 I defer to legal experts
Q41 Probably, especially if problems arise with a PM's running of an establishment with no personal licence holder on site at some times, contrary to best practice.

Prop 17
Another total capitulation to the health lobby!
Q42 No
Q43 No

Prop 18
Q44 No

Prop 19
Q45 No - unenforceable
Q46 No

Prop 20
No view

Prop 21
No real problem in my view

Further comments. Personally I would like it to be a legal requirement to have a personal licence holder on the premises during all times that alcohol is on sale.

Final comment. Despite the Minister's preamble, there is precious little evidence that any notice has been taken of the views of the TRADE in drawing up these proposals!

Best wishes and I hope that the above views are useful.

Pat Hanson MBII
Personal Licence Holder
North Berwick
East Lothian

-----Original Message-----

From: BII <bii@biimail.org.uk>

To: patrhanson <patrhanson@aol.com>

Sent: Fri, 21 Dec 2012 9:02

Subject: SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM



[View this email in your browser](#)

SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM

I wish to make all BII Scotland members aware of a new consultation which has just been launched by Holyrood. This contains a number of very significant proposals about alcohol licensing and could have considerable impact on you and your business. The consultation can be accessed here:

<http://www.scotland.gov.uk/Resource/0041/00411123.pdf>.

As Chairman of BII Scotland I plan to submit a response to the Consultation on behalf of our members and I would be grateful if you could contact me with any feedback you may have. Anyone who wishes to contribute to this should get in touch with me by 18 January 2013 at the latest, using the email address below. Your responses will be discussed at the BII Scotland council meeting on 23 January and a response will be co-ordinated.

Please take the time to read the consultation. It is incredibly important that the trade engage with Government on these matters. The proposals include the following:

- Reintroducing a "fit and proper test"
- Considering English language ability
- Tightening up rules on "member's clubs"
- Further powers for licensing boards and police
- Proposed national licensing policy

Yours sincerely,

Stephen J. McGowan
Chairman - BII Scotland
stephen.mcgowan@tltsolicitors.com

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