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ABERDEEN CITY COUNCIL

To: George Wyatt, Convener; Craig Adams, Vice Convener; Gerard Rattray (Representative of Holders of Premises Licences/Personal Licences); Inspector John Soutar (Grampian Police); Sandy Kelman (Alcohol and Drugs Partnership); David Wright, (Education); Kay Dunn (Children's Services); Linda Smith (Health); Heather Manning (Samaritans); Garry Burnett, Michelle Wall, and Mike Saint (Community Safety); Mary Crawford, Allan McIntosh, Ken Eddie, Councillor Martin Greig (Representatives of Residents within the Forum's Area); Barry Black and Callum Martin (Representative of Youth) and Diane Sande (Licensing Standards Officer).

Town House,
ABERDEEN 07 February 2013

LOCAL LICENSING FORUM

The Members of the **LOCAL LICENSING FORUM** are requested to meet in Committee Room 4 - Town House on **WEDNESDAY, 13 FEBRUARY 2013 at 2.00 pm.**

JANE MACEACHRAN
HEAD OF LEGAL AND DEMOCRATIC SERVICES

B U S I N E S S

GENERAL

- 1.1 Minute of the Previous Meeting of 15 November 2012 - Ratification of Decisions Required as this Meeting was not Quorate (Pages 1 - 6)
- 1.2 Minute of the Meetings of the Sub Group of the Forum - 13 December 2012 and 31 January 2013 (Pages 7 - 14)

1.3 Agenda and Minute of Licensing Board Meeting of 11 December 2012

The agenda for this meeting can be found at:

<http://councilcommittees/ieListDocuments.aspx?CId=151&MId=2747&Ver=4>

1.4 Workplan/Decision Sheet (Pages 15 - 20)

1.5 Further Options for Alcohol Licensing - Consultation Document (Pages 21 - 82)

Please note that this document is over 60 pages long, and only print if you want to. You can also access the document at the following web link:-

<http://www.scotland.gov.uk/Publications/2012/12/8130>

1.6 Evaluation of the Implementation of the Objectives of the Licensing (Scotland) Act 2005 - for information (Pages 83 - 106)

1.7 Member from Civic Forum - Mary Crawford

INTELLIGENCE (TO INFORM THE WORKING GROUP OF THE LICENSING FORUM)

LICENSING OBJECTIVE 1: PREVENTING CRIME AND DISORDER

2.1 Update from Grampian Police Representative

LICENSING OBJECTIVE 2: SECURING PUBLIC SAFETY

2.2 Update from Licensing Standards Officer and Councillor Martin Greig

LICENSING OBJECTIVE 3: PREVENTING PUBLIC NUISANCE

2.3 Update from Unight Representative

LICENSING OBJECTIVE 4: PROTECTING AND IMPROVING PUBLIC HEALTH

2.4 Update from Linda Smith, Public Health NHS Grampian, and Sandy Kelman (Alcohol and Drug Partnership)

LICENSING OBJECTIVE 5: PROTECTING CHILDREN FROM HARM

2.5 Update from Kay Dunn, Children's Services Representatives

MATTERS ARISING

3.1 Any Other Competent Business

3.2 Date of Next Meeting - 24 April 2013

Website Address: www.aberdeencity.gov.uk

Should you require any further information about this agenda, please contact Lynsey McBain on 01224 522123 or email lymcbain@aberdeencity.gov.uk

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LOCAL LICENSING FORUM

Thursday, 15 November 2012

Present: Craig Adams, Ken Eddie, Gerard Rattray, Heather Manning, Mairi MacLeod, Sergeant Barry Skinner, Fraser Hoggin, Linda Smith and David Wright.

Also Present: Heather Wilson, ADP/Public Health and Lynsey McBain, Clerk to the Forum.

Apologies: Sandy Kelman, JP McGivney, Garry Burnett, Councillor Martin Greig, Barry Black, Allan McIntosh and Diane Sande.

As the meeting was not quorate as per the constitution, the Forum were advised that any decisions made would be deferred to the next meeting for approval.

APPOINTMENT OF CONVENER

1. Due to the absence of the Convener, the Vice Convener took to the chair for the meeting.

NON ATTENDANCE

2. The Forum noted that this was the third consecutive meeting that Allan McIntosh had been absent from and had not sent a representative. Members discussed his future on the Forum and agreed that the clerk write out to Mr McIntosh to advise him of the situation and to emphasise the importance of attending future Forum meetings. As the Forum was unable to make any decisions today, the position would be assessed at the next meeting.

MINUTE OF PREVIOUS MEETING OF 6 SEPTEMBER 2012

3. The Forum had before it the minute of the previous meeting of 6 September, 2012.

The Forum resolved:-

to agree the minute as a correct record.

AGENDA AND MINUTE OF LICENSING BOARD MEETING

4. With reference to article 4 of the minute of the previous meeting, the Forum had before it, the minute of the Licensing Board of 21 August 2012, for information.

The Forum resolved:-

to note the minute.

WORKPLAN/DECISION SHEET

5. With reference to article 5 of the minute of the previous meeting, the Forum had before it an updated workplan.

The Forum resolved:-

to note the workplan.

RESPONSE FROM LICENSING BOARD

6. The Forum had before it, a copy of the response letter received from the Licensing Board, following requests put forward to the Licensing Board from the Forum after the last meeting.

The first point put to the Licensing Board was that the Licensing Board set up a sub-group involving members of the Licensing Board and Forum in order to explore intelligence/data that is required to assist the Licensing Board in preparation for its work on drafting the updated Licensing Board Policy due to be published in November 2013. In response the Board had agreed that a sub-group be set up to consider what relevant evidence can be provided to the Board in order for Members to assess and decide upon policy, and that four members would be at the first meeting to listen to suggestions on how the process can best be achieved. It concluded that its members should not involve themselves in the operational side of the process.

Secondly, the Licensing Forum requested that the Licensing Board formally acknowledge the recently refreshed publication of the Aberdeen City ADP Alcohol Strategy and endorse that they are in agreement with its aims and objectives. In response the Board acknowledged the Aberdeen City ADP Alcohol Strategy and supported its aims and objectives.

Thirdly the Licensing Forum requested that the Licensing Board formally acknowledged the results from the recently published Aberdeen City Voice questionnaire 26 (Alcohol purchase and promotion) and agree that the information should be considered as part of the intelligence/data which will help to inform it in the work it will do in preparing for the drafting of the updated Licensing Board Policy. In response the Board advised that they acknowledged the above statement and agreed that its results would contribute to the information to be assessed in preparation of the Policy.

Finally, The Licensing Forum requested that the Licensing Board arranged for a statistical mapping exercise to be carried out on (a) off sales and (b) on sales, across Aberdeen City. The mapping of the off-sales should detail the location of the premise and total square area of 'shelf space' used at each location for the purposes of selling alcohol. The Licensing Forum considers that the collation of this statistical data would prove extremely useful in relation to work needed to be done in preparation for the new policy statement, especially around the section on overprovision. In response the Board acknowledged that statistical data was important especially when assessing overprovision and noted that this matter could be one of the items discussed at the first meeting of the sub-group.

The Forum resolved:-

(i) to request that the Clerk of the Forum contact the Clerk to the Licensing Board to obtain the names of the four members attending the sub-group; and

- (ii) to request that the Clerk set up the first meeting of the sub-group, preferably before the end of 2012, and to advise members in due course.

ALCOHOL FOCUS SCOTLAND

7. The Forum had before it for information, a copy of the Licensing Resource Toolkit from Alcohol Focus Scotland based on Using Evidence to Support Policy and Decision Making.

The document advised that this was the second part of a toolkit which Alcohol Focus Scotland was developing to provide more guidance on public health and licensing and to build on the report launched year named Rethinking Alcohol Licensing.

The Forum resolved:-

to note the contents of the report.

STATEMENT OF LICENSING POLICY TIMELINE

8. The Forum had before it for information, a copy of the statement of Licensing Policy which outlined the timeline.

The paper advised that Scottish Licensing law required that every Licensing Board publish a policy every three years setting out how it would seek to promote the five licensing objectives. The new policy is due in November 2013.

The paper set out timelines as guidance.

The Forum resolved:-

to note the information.

DATES FOR 2013

9. The Forum had before it the dates for the future meetings to be held in 2013 for approval, which would all commence at 2pm.

The dates were noted as:-

- Wednesday 13 February
- Wednesday 24 April
- Wednesday 19 June
- Wednesday 11 September
- Wednesday 20 November

The Forum resolved:-

to approve the dates for 2013.

LICENSING OBJECTIVE 1: PREVENTING CRIME AND DISORDER

10. The Forum heard from Sergeant Barry Skinner, Grampian Police in relation to Licensing Objective 1, Preventing Crime and Disorder.

Sergeant Skinner advised that in relation to offences and trends, the amount of serious assaults in the city centre had reduced over the past five years, with 30 recorded in 2007 and 14 in 2012. In relation to serious assaults within licensed premises, it was noted that in August 2012, there were 25 recorded, and in both September and October the recorded assaults were 35.

Members questioned why there was an increase during September and October, and discussed the student population arriving in Aberdeen during these months. In particular, members discussed Fresher's Week, which draws lots of students to the city centre.

Fraser Hoggin explained that he had liaised with Aberdeen University about alcohol misuse amongst students, to see what they could do in future to help with the number of internal issues etc.

Sergeant Skinner explained that social media messages were often used to get messages regarding sensible alcohol use across to students.. He also noted that it was vital to change the mindset with students for Fresher's Week and beyond.

Fraser Hoggin added that the Alcohol and Drug Partnership was currently trying to engage with the local universities and colleges, and had asked them to look at statistics around Counselling Services, in relation to alcohol issues.

The Forum resolved:-

- (i) to request that Fraser Hoggin continue to liaise with the local universities and Aberdeen College and to feedback to the Forum with any information, including any data received in relation to the Counselling Service;
- (ii) to request that this item be added to the June 2013 agenda for discussion, notably before Fresher's Week in September;
- (iii) to request that the Forum delegate the task of looking at (1) spikes in trends with alcohol and (2) events such as Halloween, mad Friday and St Patrick's day, to the Sub Group of the Forum, and to feed any information back to the Licensing Board; and
- (iv) to otherwise note the information provided.

LICENSING OBJECTIVE 2: SECURING PUBLIC SAFETY

11. The Forum had before it a tabled update from Diane Sande, Licensing Standards Officer in relation to Licensing Objective 2, Securing Public Safety.

The update advised that since the September meeting of the Forum (a) there had been no Notices Issued, (b) 20 visits had taken place since the last meeting to a variety of premises, (c) there had been several meetings with premises managers and or licence holders to discuss complaints, promotions or general advice relating to signage, staff training and policies within licensed premises, (d) there had been Review Hearings for four premises on 2 and 9 October, (e) outstanding payment of annual fees was a current issue and there would be Review Hearings for all premises which had failed to

pay on time, (f) Licensing Standards Officers (LSO's) continued to meet on a monthly basis with the police and weekly with the Noise Pollution Team and (g) a conference named Big Review Glasgow was being held on 30 November 2012, which would be attended by LSO's.

The Forum resolved:-

to note the tabled update.

LICENSING OBJECTIVE 3: PREVENTING PUBLIC NUISANCE

12. The Forum had before it a tabled update from Ruary Campbell, Unight, in relation to Licensing Objective 3, Preventing Public Nuisance.

The update advised that (a) Unight currently a membership of 21 Venues, (b) Nox, Institute and Garage/Campus had all been invited to sign up and attend the November meeting, with Garage/Campus accepting the offer, (c) the offender database had 25 active profiles for various incidents across the city and a new system was being looked at in conjunction with Safer Aberdeen and (d) the Unight Christmas Campaigns would be finalised at the November meeting which would likely include a "Designated Driver Scheme", and "Free Cloakroom for Handbags" to combat increasing levels of theft in venues.

The Forum resolved:-

to note the tabled update.

LICENSING OBJECTIVE 4: PROTECTING AND IMPROVING PUBLIC HEALTH

13. The Forum heard from Linda Smith, NHS Grampian who advised that NHS Grampian was now a statutory consultee for new licenses being issued and for major variations to existing licenses.

Linda explained that they could provide postcode information on admissions relating to alcohol abuse, however noted that it was very difficult to determine where the alcohol had been bought from. As a result it was very difficult for them to comment on new licensing applications.

The Forum resolved:-

- (i) to request that the subject of over provision with alcohol be discussed at the first meeting of the sub group with members of the Licensing Board; and
- (ii) to otherwise note the update provided.

LICENSING OBJECTIVE 5: PROTECTING CHILDREN FROM HARM

14. Mairi MacLeod, Children's Services, Aberdeen City Council, was not present at this point to provide an update.

DATE OF NEXT MEETING

15. The Forum noted that the date of the next meeting was Wednesday 13 February at 2pm.

- **Craig Adams, Vice Convener**

LOCAL LICENSING FORUM SUB-GROUP – 13 DECEMBER 2012

Present:-

- Garry Burnett, Grampian Fire and Rescue Service (Chair)
- Inspector John Soutar, Grampian Police
- Diane Sande, Aberdeen City Council (Licensing Standards Officer)
- Sandy Kelman, Alcohol and Drugs Partnership
- Mairi MacLeod, Aberdeen City Council (Children's Services)
- Ken Eddie, Aberdeen Civic Forum
- Ruary Campbell, Unight
- Eric Anderson and Vikki Cuthbert, Aberdeen City Council (Legal and Democratic Services)
- Councillors Boulton, Cameron (as substitute for Councillor Dickson) and Forsyth

Apologies:- Councillor Dickson

Topic	Discussion/Decision	Action By
1. Remit	<p>Vikki Cuthbert, Clerk to the Forum opened the meeting by reminding the Sub-Group that it had been established following the joint meeting between the Licensing Board (the Board) and the Local Licensing Forum (the Forum) in August, 2012, arising out of discussions on the Board and Forum working together on joint aims and objectives. The Forum had subsequently agreed at its September meeting to set up a Sub-Group, and the Board had agreed to this at its November meeting, based on a letter from the Forum, and had also agreed that the Sub-Group consider what relevant evidence could be provided to the Board in order for members to assess and decide upon policy. The Board had also agreed that four of its members attend the first meeting and listen to suggestions on how the process could best be achieved, whilst noting that its members should not involve themselves in the operational side of the process.</p> <p>The Clerk to the Forum explained that the Sub-Group would make recommendations to the Forum, which would in turn make recommendations to the Board in agreeing the draft Statement of Licensing Policy.</p>	
2. Appointment of Chairperson	<p>Nominations for a Chairperson for the Sub-Group were sought. It was noted that this ought to be a member of the Local Licensing Forum, for the purposes of maintaining a separation between the Forum and the Board in relation to the SLP.</p> <p>Garry Burnett was nominated and appointed as Chairperson.</p>	

Topic	Discussion/Decision	Action By
3. Timescales	<p>Eric Anderson, Clerk to the Board, advised the Sub-Group of the timetable for producing the Statement of Licensing Policy (SLP). This was a three-year document, currently running from November, 2010 to November, 2013. A draft version would be agreed by the Board at its meeting on 30th April, 2013, and the Forum could submit recommendations on its content at this stage. The Forum would also be able to respond as part of the consultation over the summer period, and could make recommendations to the Board prior to it finalising the SLP in November. Eric also explained that the new SLP could have any range of changes included, and that it should be viewed as a working document, even beyond the November 2013 date. It would be helpful if any evidence were available to the Board by April, 2013, to assist it in preparing a draft SLP for consultation purposes.</p>	
4. Discussion	<p>The Chairperson invited those present to highlight the main areas which they would like addressed in the SLP, and any issues which were worthy of further discussion within the Sub-Group as it developed a recommended position for the Forum to submit to the Board in April. These are summarised below:-</p> <ul style="list-style-type: none"> ➤ SLP to be influenced by agreed Alcohol Strategy for Aberdeen City ➤ Link to the Single Outcome Agreement ➤ Statistical information need to be provided and scrutinised. Outcome based where possible ➤ Need to link to all five licensing objectives ➤ High-end objectives required for the Forum and this Sub-Group ➤ Measure the success of the current SLP so as to address any shortcomings, ie performance management ➤ Clarify the position in respect of over provision, particularly off-sales ➤ Address over provision in off-sales, possibly starting with a look at shelf space/visibility. Address “pre-loading”/availability of alcohol. ➤ Future SLP should take account of city suburbs as well as city centre ➤ Input from Health needs to be far more focused ➤ Seek guidance from the Scottish Government on what they are likely to consider changing ➤ Review significant changes brought about by Edinburgh and West Dumbartonshire councils due to their SLP – approach this from both Police and Health perspectives, and also ask the respective Clerks to their Licensing Boards. 	<p>Linda Smith John Soutar Eric Anderson</p>

Topic	Discussion/Decision	Action By
	<ul style="list-style-type: none"> ➤ Await the impact of minimum pricing on alcohol ➤ Need to listen to the student voice ➤ Selling of alcohol in petrol stations to be addressed <p>As part of this broad discussion, Councillor Boulton as Convener of the Licensing Board highlighted the need to make decisions which were not then the subject of successful legal challenge. Eric Anderson reinforced the need for the Board to receive robust evidence in determining its SLP, and undertook to 1) write to the Scottish Government to determine whether there were any legislative changes planned which may impact upon the SLP; and 2) to attempt to gather some information for the Sub-Group on off-sales shelf space, such as the number of licensed premises, licence fee payable and total income to the Council from such licences.</p> <p>The Sub-Group also wished to increase representation of Unight members at future meetings, and if at all possible, to seek an off-sales representative. The Sub-Group was advised that this would need to be ratified at the next meeting of the Forum, which would also be asked to agree to the addition of Councillor Greig to the membership of the Forum. Those present indicated their support for this, as this would mean valuable input from the community safety perspective.</p>	<p>Eric Anderson</p>
5. Future Meetings	<p>It was agreed to hold meetings at the end of January, February and March, and that the next meeting include on the agenda:-</p> <ol style="list-style-type: none"> 1. Current Statement of Licensing Policy – it was noted that the Board members could not form part of this discussion 2. Statistics – under each of the five licensing objectives, a list of statistics already collated and those which should be obtained. 3. Feedback from Edinburgh and West Dumbartonshire councils on their SLPs 	<p>Vikki Cuthbert</p> <p>All members</p> <p>Linda Smith John Soutar Eric Anderson</p>

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LOCAL LICENSING FORUM SUB-GROUP – 31 JANUARY 2013

Present:-

Garry Burnett, Grampian Fire and Rescue Service (Chair)
 Inspector John Soutar, and Sergeants Barry Skinner and Gill Flett, Grampian Police
 Diane Sande, Aberdeen City Council (Licensing Standards Officer)
 Sandy Kelman, Alcohol and Drugs Partnership
 Michelle Wall, Unight
 Linda Smith, NHS Grampian
 Vikki Cuthbert and Lynsey McBain, Aberdeen City Council (Legal and Democratic Services)
 Councillor Dickson as an observer.

Apologies:-

Kay Dunn, Children's Services

Topic	Discussion/Decision	Action By
1. Minute of Previous Meeting	<p>The Sub Group approved the minute, subject to recording Linda Smith's apologies which had been intimated in advance of the meeting.</p> <p>The Chairperson advised that he had emailed Ruary Campbell of Unight, to thank him for the work he had undertaken in the short period of time that he had been involved with the Forum. It was noted that Michelle Wall would be the new representative from Unight on both the Forum and the Sub Group.</p> <p>The Chairperson also advised the Sub Group that members of the Licensing Board would not attend any future meetings of the Sub Group due to the need for them to make decisions on the Statement of Licensing Policy independently of the Forum. Whilst it was disappointing that they could not be involved in discussions with the Forum and the Sub Group, this was an understandable position for the Board to take.</p>	Lynsey McBain
2. Current Statement of Licensing Policy	<p>The Chairperson advised that the first draft of the new Statement of Licensing Policy was to be drafted by March 2013. He then invited members to discuss the current policy and what changes they would like to see in the new version.</p> <p>Members discussed how generic the current SLP was, and not personalised to Aberdeen, although this was possibly the case for a number of policies across Scotland. Aberdeen's policy was not performance-based, and this was felt to be necessary in order for the Board to be able to assess its own performance, and to avoid the creation of a static policy.</p>	

Topic	Discussion/Decision	Action By
	<p>Sandy Kelman highlighted five points that he felt should be included in the new Licensing Policy:-</p> <ul style="list-style-type: none"> ❖ An overview of the current local position in relation to the 5 licensing objectives and ADP strategy, ensuring that it captures Aberdeen city as a whole, rather than just city centre issues; ❖ Details of the data, and other relevant information it has considered in formulating the policy; ❖ How implementation of the policy will aim to help promote the 5 licensing objectives; ❖ How the Board intends, on an on-going basis, to gather, monitor and assess national and local data so that it can measure ongoing local performance against the 5 licensing objectives; and ❖ How often the Board will review its performance against its policy and performance against the 5 licensing objectives. <p>During further discussion, Michelle Wall enquired how the Board intended to enforce the new policy, and queried whether this aspect could also be added, along with the five points above. Members agreed that this was a worthy addition.</p> <p><u>The Sub Group resolved:-</u> to request that the six points raised above be used for a basis for future work, and for the points to be further developed before submission to the Licensing Board.</p>	<p style="text-align: center;">All members</p>
3. Feedback from Edinburgh and West Dumbartonshire Councils	<p>The Sub Group had before it various documents from both Edinburgh and West Dumbartonshire Council's and discussed the SLPs in place at both the local authorities. IN particular it was noted that West Dumbartonshire's policy was held up across the country as an example of good practice. This would be useful as the Forum progressed with it's recommendations to the Board.</p>	<p style="text-align: center;">For information</p>
4. Statistical Information under the 5 Licensing Objectives	<p>The Sub Group discussed statistical information and how it could be used to provide evidence to the Licensing Board in order for the new Licensing Policy to be amended. It was noted that the more evidence presented, the better, and that timescales were pretty tight.</p> <p>Also noted by the Sub Group -</p> <ul style="list-style-type: none"> ❖ Statistical information should be contextual, to provide greatest assistance to the 	<p style="text-align: center;">All members</p>

Topic	Discussion/Decision	Action By
	<p>Board.</p> <ul style="list-style-type: none"> ❖ Possible need to identify data zones for the city. ❖ Look beyond Scotland to other countries, and learn from their experience as regards licensing policy. ❖ Link with new Single Outcome Agreement and information contained therein. <p><u>The Sub-Group resolved:-</u> that members gather statistical information from their respective organisations and submit any evidence collected to Sandy Kelman by Monday 18 February in order for Sandy to collate the evidence into a template for future discussion; and that a template be issued to Sub Group members after the meeting by the clerk.</p>	<p>Lynsey McBain</p>
5. Closing Remarks	<p>The Chairperson thanked Inspector John Soutar for all his hard work over the years, particularly his contribution to the Local Licensing Forum, and wished him a happy and healthy retirement from the police force.</p>	
6. Date of Next Meeting	<p>It was noted that the next meeting of the Sub Group would be held on Wednesday 27 February at 10am.</p>	<p>All members</p>

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ABERDEEN LOCAL LICENSING FORUM

WORKPLAN AS AT 13 February, 2013

Remit of Local Licensing Forums as set out in the Licensing (Scotland) Act 2005 – keeping under review the operation of the Act in the Forum’s area and in particular the exercise by the Licensing Board of their functions including giving advice and making recommendations to the Board in relation to those matters where the Forum considers it appropriate. The Act does not enable a Forum to review or give advice or make recommendations in relation to the exercise by a Board of their function in relation to a particular case. “Case” is taken to mean an application before a Board and in the interests of natural justice is also taken to mean individual licensed premises. The preferred route for consideration of complaints about the running of licensed premises is to write directly to the Clerk or Depute Clerk to the Licensing Board.

The Licensing (Scotland) Act 2005 requires Licensing Boards in exercising any of their functions to have regard to any advice given or recommendations made to them by a Local Licensing Forum and where the Board decides not to follow the advice or recommendation to give the Forum reasons for that decision, the Board must provide copies of relevant statistical information to the Forum as it may reasonably require for the purposes of its general functions.

Licensing Standards Officers have a general function of providing to interested persons information and guidance concerning the operation of the Act, supervising compliance with the Act and the conditions of their licences by holders of Premises Licences and Occasional Licences and mediate between communities and the trade or between any two parties where there is a need to resolve a local problem and develop a local solution. LSOs do not act as “policemen” with regard to licensing but they will liaise with the police and other relevant officials such as Environmental Health Officers in pursuit of the objectives of the Act.

No	Licensing Objective	Update/Outcome/Response	Referrals to Licensing Board or Clerk	Recommendation to Statement of Licensing Policy Consultation
(1)	<p>Preventing Crime and Disorder</p> <ul style="list-style-type: none"> • Various Issues around 	to request that Fraser Hoggin		

No	Licensing Objective	Update/Outcome/Response	Referrals to Licensing Board or Clerk	Recommendation to Statement of Licensing Policy Consultation
	alcohol misuse.	<p>continue to liaise with the local universities and Aberdeen College and to feedback to the Forum with any information, including any data received in relation to the Counselling Service;</p> <p>to request that this item be added to the June 2013 agenda for discussion, notably before Fresher's Week in September;</p> <p>to request that the Forum delegate the task of looking at (1) spikes in trends with alcohol and (2) events such as Halloween, mad Friday and St Patrick's day, to the Sub Group of the Forum, and to feed any information back to the Licensing Board;</p>	<p>Clerk to add this item to June 2013 agenda.</p> <p>Clerk refer this to the Sub Group for action.</p>	
(2)	<p>Securing Public Safety</p> <ul style="list-style-type: none"> Find out from communities what are their areas of concern. 	<p>The Community Council Liaison Officer is now included in the distribution list of the Forum so that she can disseminate a request for continued communication to all</p>		

No	Licensing Objective	Update/Outcome/Response	Referrals to Licensing Board or Clerk	Recommendation to Statement of Licensing Policy Consultation
	<ul style="list-style-type: none"> • To receive reports from the Licensing Board containing relevant statistical information. • Doors Supervisor Working Group 	<p>community councils. The Forum and Board will continue to liaise at joint meetings. An invite to the Depute Clerk of the Board to attend a meeting to discuss incoming legislation was made. At the first meeting of the Licensing Board after the local elections, it appointed one additional member to the Doors Supervisor Working Group. As a result, the Board had asked if the Forum would also like an additional member on the group.</p>	<p>A member would be allocated from Unight and reported back to the November meeting.</p>	
(3)	<p>Preventing Public Nuisance</p> <ul style="list-style-type: none"> • Improve intelligence in relation to statutory bodies. 	<p>The Forum is gaining experience as it considers topics and input from Forum members who are representatives of relevant</p>		

No	Licensing Objective	Update/Outcome/Response	Referrals to Licensing Board or Clerk	Recommendation to Statement of Licensing Policy Consultation
		agencies. The Forum has been represented at conferences and training events and will continue to do so.		
(4)	Protecting and Improving Public Health			
(5)	Protecting Children from Harm			
(6)	Any Other Competent Business Raised	<ul style="list-style-type: none"> To request an outline from the Licensing Board on measures it will employ to ensure compliance with the five licensing objectives. This is being addressed as part of the review of the Statement of Licensing Policy. 		<p>Licensing Standards Officer one other officer has been trained in the Licensing Act duties. Other staff have also received elements of LSO training and this should facilitate a more proactive approach in relation to visiting licensed premises. The LSO's Line Manager will continue to monitor her workload which is standard Council practice.</p> <p>At the joint meeting with the Board on 23/4/10 it was confirmed that it will continue to monitor statistical trends in relation to crime and if possible health and other indicators in order to evaluate contributions to the achievement of the licensing objectives.</p>

ACTIONS FOR LICENSING FORUM IN
ALCOHOL STRATEGY 2009 – 2019 AND IN ALCOHOL RELATED DISORDER IN THE CITY CENTRE ACTION PLAN

- (1) Reducing Consumption – The Licensing Board will consult widely on specific measures to deliver and enhance their policy including receiving advice from the Licensing Forum.
- (2) Prevention (a) – Encouraging developments to increase access to food and non-alcoholic drinks in clubs and the licensed premises at night in liaison with Unight, the Licensing Board and City Centre/Safer Aberdeen Forum.
- (3) Prevention (b) – Review to establish how a more preventative approach to over-consumption of alcohol can be devised in partnership between the Licensing Board and the trade.
- (4) Prevention (c) – Attract different types of premises to offer family orientated entertainment such as late night coffee shops, cafes, etc. in liaison with the Licensing Board, Unight, Safer Aberdeen Forum and Economic Development staff.

committees/aberdeen local licensing forum/Notes/workplan may 2013

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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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An evaluation of the implementation
of, and compliance with, the
objectives of the Licensing
(Scotland) Act 2005

Second Interim Report Summary

November 2012

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Mabelis, J and Corbett, J
ScotCen Social Research

We are happy to consider requests for other languages or formats. Please contact 0131 536 5500 or email nhs.healthscotland-alternativeformats@nhs.net

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Abbreviations and glossary

Alcohol Drug Partnerships (ADPs): Alcohol Drug Partnerships are multi-agency groups with responsibility for developing co-ordinated approaches to drug and alcohol related work at local level.

Alcohol etc. (Scotland) Act 2010: This Act, which came into full effect in October 2011 introduced, in relation to off-sales, a ban on quantity discounts and restrictions on the location of alcoholic drinks promotions. The Act also requires licensed premises to have an age verification policy setting out the steps to be taken to establish the proof of age of anyone who looks like they are aged under 25 (Challenge 25). The legislation also requires licensing boards to consult with relevant health boards when preparing their licensing policy statements, and to inform health boards of applications for new premises licences.

Licensing Board: There is at least one licensing board in each local authority area. The main function of the board is to regulate premises that sell alcohol to the public.

Local Licensing Forum: Licensing Forums were established in the Licensing (Scotland) Act 2005, and each local authority area has at least one forum. The role of the forums is to keep under review the operation of the Act by the licensing board in their area.

LSO: Licensing Standards Officer. The LSO role was established in the Licensing (Scotland) Act 2005, and each local council has at least one LSO in post. The role of the LSO includes providing information and guidance with regard to the Licensing Act, supervising compliance and providing mediation to help resolve disputes.

Licence Holder: The Licensing (Scotland) Act 2005 made it a requirement that anyone wishing to sell alcohol on his/her premises has to hold a premises licence. The Act also introduced a new personal licence. Each premises licence must name the 'premises manager'. The premises manager will have to hold a personal licence. A personal licence permits that person to supervise and authorise the sales of alcohol on the premises.

Licensing (Scotland) Act 2005: This Act, which came into full effect on 1 September 2009, overhauled existing licensing arrangements and introduced a range of significant new measures to protect communities from alcohol-related harm. It established five licensing objectives, including, for the first time, 'protecting and improving public health.'

Test purchasing: Suitable 16 year old volunteers are recruited by the police to attempt to purchase alcohol from licensed premises (with undercover police

supervision). Premises which fail the test purchase can be referred to the procurator fiscal and licensing board.

1. Introduction

In 2010, as one of the studies being undertaken as part of the Monitoring and Evaluating Scotland's Alcohol Strategy work programme¹, NHS Health Scotland commissioned a three year evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005² (referred to subsequently as 'the Licensing Act'). The first stage involved telephone interviews with Licensing Standards Officers (LSOs) and licensing board representatives from across Scotland. A briefing paper summarising the findings from the first stage was published in June 2011³.

The following presents a summary of some of the key findings emerging from the second stage of the evaluation. This comprised of case studies in five local authority areas in Scotland and involved interviews and focus groups with members of local licensing forums and focus groups with licensing board members, together with an analysis of board policy statements. The focus groups and interviews were conducted over the period June to September 2011.

The case study areas were selected on the basis of the first stage telephone interviews and included local authorities where the Licensing Act was perceived by those interviewed to have had a positive or very positive or large impact on the area, and those where the impact of the Act was perceived to have been negligible or quite negative. The selection also included city, small town and rural areas.

The aims of this stage of the evaluation were to obtain a more in-depth understanding of how the Licensing Act was being interpreted and implemented at local level, the perceived barriers and facilitators to implementation and views on the impacts of the legislation.

¹ Further information on the Monitoring and Evaluating Alcohol Strategy programme of work can be found on the NHS Health Scotland website: <http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx>

² Further information on the aims and objectives of the evaluation can be found on the NHS Health Scotland website: <http://www.healthscotland.com/documents/4044.aspx>

³ MacGregor, A., Sharp, C., Mabelis, J., and Corbett, J. (2011), *An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: First Interim Report Summary*, NHS Health Scotland: Edinburgh. (<http://www.healthscotland.com/documents/5253.aspx>)

2. Key findings from focus groups with licensing board members

2.1 Activities

2.1.1 Licensing board policy statements

The Licensing Act requires boards to prepare and publish a statement of licensing policy every three years, keeping it under review during this period and making revisions where appropriate. The policy statements should seek to promote the five licensing objectives set out in the Act⁴, and provide 'guidance and clarity' about the bases on which the boards make their decisions.

In developing their policies the Act requires the boards to consult with the local licensing forums, or representatives of specific groups or agencies if these are not represented on the local forum.

At the time of the focus groups the case study boards had recently published their 2010 policy statements. Participants described how, in developing these, they had held a number of 'informal' board meetings as well as consultations and meetings before producing a draft statement for comment. Those invited to comment on the drafts included the local licensing forums, licensed trade organisations and community councils.

Board members commented that although their policy statements still felt like a 'work in progress' they were encouraged by the fact that few legal challenges had been mounted, suggesting to participants that their policies were accepted and working well.

Reflecting this sense of policy statements as an on-going or dynamic piece of work, boards indicated areas where they either had, or anticipated making changes to their policies. This could be in response to 'external pressure' e.g. from the local licensing forum to place more emphasis on the public health objective, or as a result of on-going activity around overprovision assessments.

2.1.2 Assessing overprovision

As part of their policy statements, boards have a duty to assess the extent to which there may be an overprovision of licensed premises in any locality within their area. In undertaking their overprovision assessments, boards can take into account not just the number and capacity⁵ of licensed premises in localities, but also licensed premises of a particular description.

⁴ The five licensing objectives are: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children from harm.

⁵ The proposed methodology for calculating capacity is set out in the Licensing Act guidance. For off-sales this is based on metres of frontage used to display alcohol; for on-sales it is based on building regulations and determined by local authority building standards officers. (Scottish

Case study board representatives described how, in developing their overprovisions assessments they had consulted with the police, local licensing forums and public. Boards had also studied local data on alcohol-related crimes, alcohol-related health harms and numbers of outlets. Several boards had commissioned researchers to undertake the analysis. In one of these boards the local Alcohol Drug Partnership (ADP) had undertaken an analysis of alcohol-related health and offence data on behalf of the board and the forum.

However, some case study board respondents suggested that they were still struggling to define and measure capacity and overprovision. One board, for example, described the difficulty of balancing *capacity* (for example, shelf space) and the *number* of premises.

Although the Licensing Act guidance advises boards to take into account the style of operation of premises (as outlined in the operating plans submitted with licence applications) and 'particular descriptions' of premises (recognising that different types of premise may have different impacts), one board felt there was a need to reintroduce the different licence types⁶, arguing that the 'generic licence' made it more difficult to assess overprovision in a locality.

'Under the old Act, it was very simple. It was shops. You had seven shops, somebody wanted another one, we would have a moratorium in an area for instance, we had that power. The nearest we've got to that is overprovision...So, 'overprovision', is it shelf space? Is it shops?..[large supermarket] is..How many shops would you say that is?'

The issue, however, was not solely about the sources of data or methodology for calculating density or provision, but of interpreting the data, specifically how to balance, or even trade-off the different types of 'harms', particularly between the health impacts of 'overprovision' and the economic impacts of reduced provision. One board representative, for example, suggested that overprovision was not a concern locally because the board and 'other key agencies' regarded licence applications as business opportunities, particularly in the context of a perceived loss of licences resulting from the economic downturn. Another respondent cited the difficulty of refusing certain types of licence where there was an 'economic case' for development. In one area, respondents in fact described the interventions of those they described as 'health professionals' as unhelpful, particularly if they were seen as favouring a blanket ban on all new licences in specific areas.

Government (2007) *Licensing (Scotland) Act 2005: Guidance for Licensing Boards and Local Authorities*, Scottish Government: Edinburgh (<http://www.scotland.gov.uk/Publications/2007/04/13093458/0>).

⁶ The Licensing Act introduced a single premises licence to replace the seven fixed categories of licence contained in the Licensing (Scotland) Act 1976.

In other case study board areas, however, health concerns seemed to have been given a higher priority. In one board, for example, the overprovision assessment had been driven by a concern with the high number of alcohol-related health problems⁷.

The difficulty of weighing up the different considerations is perhaps also implicit in the comment made by one board, which, when describing the problem of determining what criteria to use to assess overprovision, cited the example of areas which might have a 'surplus' of 'well run' outlets compared with an area with a lower number of outlets but creating more difficulties within the community.

Where boards have identified localities that they have assessed as being overprovided in terms of the number and/or types of premises, they can refuse new licence applications. Three of the five case study boards indicated that the assessments of overprovision had informed their decision-making and had refused licence applications on the grounds of overprovision in these localities. Consideration would, however, be given to the type of premise applying for a licence in these areas, particularly if, as noted above, there was an 'economic case' and the application was for a hotel or restaurant.

Overprovision was not considered to be an issue in the remaining two case study areas which cited the economic downturn as a factor behind the reduction in the numbers of licensed premises. In these areas the perceived issue was one of *lost* capacity rather than 'overprovision', particularly when the types of outlet which had closed were those that were not felt to be generating alcohol related problems such as small hotels, rural shops and heritage sites. The perceived shift to off-sales was also felt to have resulted in the loss of the more traditional style pubs.

2.1.3 The public right to object

The Licensing Act makes it possible for anyone to object or make representations to a licensing board about any application for a premises licence⁸. To support this, case study board members described using websites to provide information and guidance to the public on making objections, as well as providing advice to community councils on the procedures. New licence applications were also advertised in the press and statutory notices pinned to the doors of premises making applications.

Board members did, however, draw attention to some of the difficulties of facilitating the public right to object. First, public awareness was still felt to be

⁷ Under the Alcohol etc. (Scotland) Act 2010 boards are required to consult with the relevant health board when preparing their policy statements, particularly in relation to their overprovision assessments. Boards must also inform the health board of applications for new premises licences.

⁸ Under the Licensing (Scotland) Act 1976 only certain categories of people could object, such as a neighbour, community council or a church.

limited. Second, where objections were raised it was felt that these tended to be made by the same individual or groups of individuals. Third, board members were aware of the power imbalances that may discourage members of the public from either submitting their objections in writing or repeating their objections at a board meeting where they may face opposition from a lawyer representing the licence holder.

Community Councils were seen as having a role in redressing the power imbalances and raising concerns on behalf of a local community. It was also suggested that LSOs were acting as a channel for local objections.

Perhaps as a result of the lack of awareness case study boards had received few objections from the public. Where objections were received this could, however, result in additional conditions being added to a licence.

2.2 Impacts

2.2.1 Meeting the Licensing Act objectives

In each of the case study areas licensing board members participating in the focus groups were asked which of the five licensing objectives they felt that they had been most and least successful in addressing.

One board, which argued that it was not possible to separate out the individual objectives, felt that it was successfully addressing all of them. The other four case study areas felt that they had been most successful in addressing the 'preventing crime and disorder' objective. One board also felt that they were tackling the 'protecting children from harm' objective well locally, while another cited success in relation to 'preventing public nuisance'. Only one of these four boards felt it had been successful in addressing the 'protecting and improving public health' objective.

Boards acknowledged that the successful realisation of these objectives could only be achieved through joint working with a range of professional groups, agencies and individuals. These included, as 'professional advisors' to the board, LSOs, environmental services, building and trading standards officers, police, fire service, and more broadly, the licensed trade and lawyers representing the trade, community councils, the public, ADPs and health and social work agencies.

In addition to joint working, board representatives also cited the local knowledge and expertise of board members, and the legal expertise of the board clerks, as contributing to their success in achieving the Act's objectives.

Perceived barriers were both 'strategic' and 'operational' and often reflected competing imperatives or interpretations.

At a strategic level, respondents referred to the particular difficulties of defining and measuring the 'protecting and improving public health' objective. Although board respondents included health agencies among the groups helping to achieve the Act's objectives, in some instances, existing links with health were felt to be poor or not as productive as they could be. As noted above, in relation to overprovision assessments, for example, the different bodies may bring with them competing or different perspectives on the nature of the 'problem'.

At an 'operational level', in one case study area, local sheriffs' decisions in relation to cases relating to individual premises were felt to run counter to what the board felt they were trying to achieve. In particular, the board felt that the time delays before cases were heard on appeal and the perceived emphasis placed by the courts on the licence holder's behaviour and practice in the intervening period, rather than the impact on local communities, undermined the realisation of the licensing objectives.

The realisation of the licensing objectives was also felt to be undermined by the potential for large supermarket chains to mount a legal challenge if a board decided to reject an application for a new outlet in a locality considered overprovided.

2.2.2 Addressing irresponsible promotions

The Licensing Act prohibits irresponsible drinks promotions⁹ as a mandatory condition of premises licences. To preclude 'happy hours' the Act also makes it a requirement that the prices of alcohol have to be fixed for at least 72 hours¹⁰. Some of these irresponsible drinks promotions apply to off-sales, particularly promotions aimed at young people, but the main focus is on the on-sales sector with a view to discouraging 'binge' drinking or the consumption of large quantities of alcohol in a short time period. The Alcohol etc. (Scotland) Act 2010 (the 'Alcohol Act') subsequently introduced a ban on quantity discounts in off-sales and restricted the location of drinks promotions in off-sale premises. Data

⁹ In both on- and off-sales, a drinks promotion is considered irresponsible if: it relates specifically to an alcoholic drink likely to appeal to people aged under 18 years; involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks); is based on the strength of any alcohol; rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly; offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises. In addition, in relation to on-sales only, a drinks promotion is irresponsible if it involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink; involves the supply of unlimited amounts of alcohol for a fixed charge (including any charges for entry to the premises); and encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume.

¹⁰ Under the Alcohol etc. (Scotland) Act 2010, this was amended so that for alcohol sold for consumption off the premises the 72-hour restriction only applies in relation to the price of the particular product in relation to which the price has previously been varied, as opposed to all alcoholic products sold. As this implies, this only relates to off-sales.

collection for this stage of the evaluation pre-dated the implementation of the Alcohol Act which came into effect in October 2011.

The perception among board respondents was that although instances of irresponsible promotions still occurred in on-sales this was now less of a problem with few cases reaching the board. The continued sale of discounted alcohol in off-sales, however, remained a concern for some of the case study boards. Although respondents hoped that the Alcohol Act would help to reduce quantity discounting by supermarkets this was tempered by the view that this might not be sufficient to stop them from selling low priced alcohol.

Factors which boards felt supported compliance with the ban on irresponsible promotions included the work of the LSOs who, through their direct contact with the licensed trade, were able to stop such promotions at a very early stage. Boards were also alerted to possible breaches by the police, 'general public', as well as by members of the licensed trade. The possibility of sanctions being applied by a board was also perceived to act as a deterrent, and if cases did reach a board it was suggested that these could be resolved primarily by issuing a warning letter.

For some of those interviewed, however, the way the legislation defined 'irresponsible promotions' hampered enforcement of the ban - allowing too much scope for variable interpretation and for premises to 'work their way round them'. It was also suggested that the mandatory requirement for alcohol prices to be fixed for at least 72-hours had 'backfired': it was suggested that some outlets were reducing costs for days earlier in the week, before increasing prices over the weekend period.

2.2.3 Improving the serving environment

Generally boards felt that the Licensing Act had helped to raise licensed trade standards.

The mandatory training requirement for personal licence holders¹¹ and all staff who serve alcohol¹² was felt to have increased awareness of the requirements of the legislation. Some board respondents did, however, suggest that in some sectors such as the heritage industry or tourist shops it should not be necessary for personal licence holders to undergo the full training or to have to train their staff.

Implementation of, and compliance with, training requirements was supported by the role of LSOs in monitoring staff training, through checking training records, for example, and through boards being able to issue warning notices or endorse or revoke licences in cases of non-compliance.

¹¹ This must be an accredited Personal Licence Holder qualification.

¹² Training has to be for a minimum of two hours, covering a set syllabus and provided either by a personal licence holder or an approved trainer.

Continuing poor practice, such as serving alcohol to someone who was underage, or who was drunk, was, though, also identified. Some respondents questioned the quality of training provided to staff by some personal licence holders, and the support available to staff once trained if, for example, they were unable to speak English.

2.3 Facilitating factors and barriers to the role of the boards

Factors felt to support the role of the boards included, at a 'strategic' level the shift from a reactive role, processing applications, to a more dynamic function, enabling boards to develop policies based on local needs.

'Operationally' boards welcomed the extended range of powers¹³ and sanctions available to them, enabling them to suspend or revoke licences with immediate effect.

In addition, the role of the LSOs, as well as the police and other statutory agencies, in ensuring compliance at licensed premise level was seen as supporting the work of the board.

Despite the extended powers, several case study boards felt that they wanted more scope to be able to impose conditions locally to enable them to reduce or vary licensing hours. This could be either to further restrict opening hours by stopping off-sales of alcohol after 8.00 pm (rather than as currently at 10.00 pm), or to enable some types of premises to be able to sell alcohol before 10.00 am.

Boards felt particularly powerless in addressing the sales of cheap alcohol from supermarkets.

The potential for board decisions to be overturned on appeal to the Sheriffs' court was also felt to undermine the role of the Board.

3. Key findings from focus groups and interviews with local licensing forum members in five case study areas

Following a proposal contained in the Nicolson report¹⁴, the Licensing Act requires every council to establish a local licensing forum. The role of the forum is to keep the operation of the licensing system in their area under review. The forum does not review or offer advice in relation to individual licence applications or cases that come before the board. The board has a duty to 'have regard' to the forum's views and must offer reasons where it takes decisions against the advice of the forum. Forum and board are required to meet at least once a year.

¹³ These were extended by the Alcohol Act which enables boards to impose variations in premises licence conditions on licences of a particular type, in a particular locality or across their area.

¹⁴ The Nicholson Committee (2003), *Review of Liquor Licensing Law in Scotland*, Scottish Executive: Edinburgh (<http://www.scotland.gov.uk/Publications/2003/08/17590/22947>)

The five 'constituencies of interest' the Licensing Act anticipates being represented on the forum are: holders of premises and personal licences; the chief constable for the police area in which the forum is situated; representatives from health, education or social work; young people; and people resident within the forum's area¹⁵. The Act also requires a local LSO to be a member of the forum.

The Licensing Act guidance¹⁶ underlines the need for the forum to be seen as 'independent and expert' and able to develop an identity separate from the board or other interest groups.

In two of the case study areas the forum had been set up prior to the legislation coming into effect, in the other areas, the role was in many respects still evolving. The following focuses on five issues: forum membership, internal working relationships and role; working with boards; addressing alcohol availability locally; the perceived impacts of forums; and barriers and facilitators to the role of the forums.

3.1 Forum membership, internal working relationships and role

3.1.1 Membership and working relationships

Members of the case study forums reflected the constituencies of interest identified in the legislation, including representatives from the licensed trade, the police, community councils, public health and LSOs as well as the 'local council'. Other bodies represented included addiction services, environmental health, the legal profession, and business bodies, including representatives of the 'night time economy'. All of the forums had experienced difficulties recruiting young people. Two of the forums felt they did not yet have sufficient community representation.

The issue of independence was touched upon indirectly by representatives of one forum among whom there were differences of opinion about whether the right balance had been struck between the level of licensed trade involvement and that of community and health representatives.

In general, forum respondents felt that members from the different bodies represented had developed working relationships and a means for reaching a consensus. A consensus may not, however, always be achievable: one forum, for example, alluded to fundamental differences between those representing a 'health agenda' and those representing business interests. It was suggested that this had resulted in some issues effectively becoming 'off limits' for discussion.

¹⁵ The Alcohol Act introduced a requirement for at least one member of the forum to be nominated by the health board for the forum's area.

¹⁶ Scottish Government (2007) op cit

3.1.2 Remit, role and scope of the forum

In relation to the remit and role of the forums two related issues emerged. On the one hand, in two of the case study forums members felt that the role and remit of the forums was unclear. Some respondents felt that, as a result, the forum lacked sufficient focus to be able to provide meaningful support to the boards.

On the other hand, the focus groups and interviews also suggest that it was not necessarily the role of the forum per se that was the issue but the perceived scope of the forums' work. Most members saw their role as being to review the licensing board's policy statement and feedback to the board. For some forum representatives this work was comparatively narrowly defined in terms of serving as an intermediary between the community and the licensing board, providing a 'balanced opinion', highlighting 'practical problems', 'attaching commonsense provisions', or acting as a check and balance on the board and its practices.

'I think the forum should be there to attach commonsense provisions to what looks like a very sterile Act, and therefore helping the community, helping the local business, or indeed to address any complaints the public has.'

Others, however, saw the forums as having a broader role encompassing wider public health and social issues.

'To keep the licensing system in the area under review. To identify and adopt best practice within the licensed trade, and to keep a watchful eye on Scotland's relationship with alcohol, and to see what initiatives we can work on that will help improve those statistics.'

Respondents' comments suggest that there could be differences in approach both between and within forums, with some of those interviewed questioning the attempts by colleagues to raise 'social problems' in the context of forum discussions.

'It's a licensing forum so social problems...I would question whether they would come into that. And some forums discuss social problems, the task of the forum is to oversee the implementation of the Act.'

3.2 Working with licensing boards

3.2.1 Working with licensing boards

In addition to the mandatory annual meeting, further direct contact between boards and forums appears to be comparatively limited.

The value of more frequent contacts was raised by a number of forum members: in two case study areas it was suggested that there should be more than one joint meeting with the licensing board per year. Others felt there should be scope

for board members to regularly attend forum meetings¹⁷ to ensure that the views of the forum were raised with boards. The potential value of forum members sitting on boards was also suggested, but it was recognized that this option would not be feasible because board members are elected councillors.

Working relationships with boards seemed variable across the case study forums. Members of one forum, set up prior to the implementation of the legislation, described a positive working relationship between themselves and the board, which had 'helped achieve the results we have'. Other forums described what they perceived to be a lack of contact with, and support from, the boards.

3.2.2 Reviewing board policy statements

Forums described a process of reviewing board policy and feeding back on any emerging issues. The data the forums drew on in the review process included routinely collected police and health statistics on alcohol related incidents and alcohol related harms. One forum in particular had worked with the board and local ADP to collect and analyse data to inform the board's overprovision assessments. A number of forums did, however, describe difficulties in gathering and interpreting the available data in a way that they could make meaningful to a local area. In part this was a resource issue: one forum, for example, referred to the lack of a designated person to identify, obtain and report on the available data. In part, however, it reflected difficulties in disaggregating routinely collected data to forum level.

Although, as suggested above, forums saw themselves as 'go between's' between the board and the community, the extent to which the case study forums involved the community in their reviews appears variable. One forum, for example, held a development day to obtain information on issues of key concern to the licensed trade and the public. Another, however, had fed back the forum members' views, but had not sought to obtain the views of the wider community.

3.2.3 Impact on licensing boards' policies

Representatives of the case study forums gave examples of areas of licensing board policy over which they felt they had had an influence. One forum, for example, felt it had had a key role in informing the local overprovision assessment. Others described specific changes that had been introduced in response to the advice from the forum in relation to, for example, policies on prohibited drinking areas and children's access to licensed premises after 9.00 pm for specific events.

Respondents also cited instances where they felt they had had little impact, whether this was to introduce more flexibility into licence conditions, in relation to Sunday morning drinking, for example, or, conversely, to introduce greater controls on alcohol availability to curb excessive drinking associated with big

¹⁷ The Licensing Act guidance does suggest that councils may wish to consider whether a member of the board should sit on the forum to provide a direct link to the board.

events. One forum representative, expressing concern about the levels of alcohol-related violence which they felt was impacting on the local A&E, would have liked to have been able to work more closely with the board to look at licensing hours, but they felt they 'had not been successful in being able to influence that'.

The working relationships and degree of communication were felt to be influential on the extent to which the forums could influence boards' decisions. One forum, which felt it had been able to inform the board's overprovision assessment, described how the board and forum had worked 'hand in glove'. Other forums suggested more distant and what were perceived to be less effective working relationships.

3.3 Meeting the licensing objectives: addressing availability

3.3.1 Achieving the licensing objectives

From the perspective of forum members most progress locally had been made in relation to the 'preventing crime and disorder' and 'preventing public nuisance' objectives. At a planning level, joint and partnership working between different agencies and bodies, such as between the forum, community safety forum and anti-social behaviour task group were felt to have helped support the achievement of these objectives. At an operational level, forum members cited different measures in support of these objectives, such as initiatives to disperse people quickly from nightclubs, the introduction of plastic and toughened glass, and the implementation of test purchasing to address underage drinking.

Reflecting the perspectives of their board colleagues, four of the five forums felt that least progress had been made locally toward achieving the 'protecting and improving public health' objective. This objective was felt to be the least well understood and the most difficult to apply and measure.

In making decisions in relation to individual licence applications boards must determine each application on its own merits, even when the application is for a premise in an area assessed as overprovided. In this context, some forum members felt that, in comparison with the objectives concerned with crime and disorder, public safety and protecting children from harm, the 'global' nature of the public health objective, often based on population-based evidence, made it difficult for boards to establish a 'causal link' between individual outlets and the impacts on health:

'You've got to show a causal link, that's almost impossible to show a causal link because who are you going to blame? Is it off-sales that somebody has bought their drink at before they've went out, is it the pub they've went into locally, or is it the club in the city centre... that they've had their last drink in? It's actually very difficult to get that causal link and that's where all the NHS and the health information..are usually national or certainly regional and I think..that's where we need to go in terms of the public health agenda.'

One forum, in fact, described what they saw as the 'discrepancy' between individual licence applications, the practice in individual premises, board reviews of licenses and the wider public health objective. Even the forum that felt that it was making progress in relation to this objective suggested that its intangibility made it much harder to evidence.

In addition to the difficulties associated with interpreting, meeting and measuring the public health objective, it was also suggested that the continued availability of cheap alcohol via supermarkets undermined the realization of this objective.

3.3.2 Overprovision assessments

In one case study area, the overprovision assessment undertaken in partnership between the forum, board and ADP, had resulted in a number of localities being assessed as overprovided, based on the relatively high number of alcohol-related health problems. This was reflected in the board's policy statement.

In a second case study area, forum members were in agreement with their board that because of the number of premises that had closed or not renewed their licences the area was not currently overprovided. Forum members did though express reservations about the possible increase in events to which people could bring their own alcohol.

In the remaining three case study areas the responses suggest differences of perspective within forums, and potentially between individual members of forums and boards. In one area, for example, while some forum members felt that the density of certain types of premises in some areas had increased public nuisance and crime, others were of the view that the economic downturn had reduced the number of premises such that overprovision was not an issue. In this area one forum member expressed disappointment that the board had not identified more localities as overprovided. In another case study area a health board representative on the forum had disagreed with the licensing board's assessment that overprovision was not a problem.

In addition, as noted above a member from one forum referred to the difficulties of establishing a 'causal link' between an individual premise and the more 'global' alcohol-related harms.

In the light of the difficulties of assessing overprovision forum members argued for clearer guidelines and support in assessing overprovision.

3.3.3 Addressing irresponsible promotions

Like their board peers, forum representatives felt that, in general, irresponsible promotions had become less of a problem in the on-sales sector. This was attributed to the powers and restrictions introduced under the Licensing Act, and to the role of LSOs in ensuring compliance with the legislation.

Interviewed prior to the implementation of the Alcohol Act, forum members felt

that irresponsible promotions were a continuing problem in relation to the off-trade in general and supermarkets in particular.

One forum member while suggesting that overprovision was an issue in the area, nonetheless expressed some sympathy with what they saw as the economic pressures on the licensed trade. The need to make a profit in a competitive market was felt to almost force businesses to adopt irresponsible promotions, 'not because they want to do them, they're there [irresponsible promotions] because they have to do them'.

It was conjectured that when implemented the Alcohol Act might go some way toward further curbing irresponsible promotions. One forum also suggested that minimum unit pricing, if introduced, would also impact on irresponsible promotions.

3.3.4 Improving the serving environment

For some forum members the on-trade was seen as providing a more 'controlled environment' for drinking. A member of one forum, for example, suggested that marketing could be used to promote the use of pubs, clubs and restaurants because these provided safer drinking environments than obtaining cheap alcohol from supermarkets.

In terms of the more specific impact of staff and personal licence holder training on the serving environment, three main issues emerged:

- First, concerns about whether the length and content of the training, particularly the two hours training for premises staff, was sufficient to have an impact on practice;
- Second, the difficulties of being able to assess the impact of training; and,
- Third, because of the lower demand in rural areas concerns about not being able to maintain sufficient trainers, particularly to meet the likely demand from personal licence holders who will be required to re-do their training after five years in 2014.

3.4 Facilitators and barriers to the role of the forums

Internal factors that were felt by forums to impact on their effectiveness as a body included the quality of the working relationships between members and the mix of backgrounds and experience, and clarity about the role, remit and scope of the forum.

Forum members underlined the importance of understanding and respecting the various perspectives of the different individual members. They also referred to the value of having members who brought a range of expertise and knowledge in relation to, for example, the law, the licensed trade, health or local issues. Conversely, this very mix could result in tensions and 'competing voices'

between, for example, those members perceived as prioritizing a concern with health-related impacts and those emphasizing the importance of economic growth, or who felt that public health considerations were outwith or beyond the remit of alcohol licensing bodies.

For some members the lack of clarity about the role and remit of the forum was felt to impact on its effectiveness. It was suggested that guidance or training was needed to help clarify the role of the forums and the responsibilities of members. One forum, however, felt the issue was less the need for clarity, since this was set out in the Licensing Act, but more about how to evidence their effectiveness as a body: at present they felt they had no way of measuring whether they were carrying out their functions successfully.

The scope of the forum's role was raised by a number of participants. Several forum representatives, for example, expressed frustration that there were issues which were considered outwith the scope of the forum, such as specific local problems or issues 'we can talk about street crime but not actually talk about where the crime was, or how it developed'. These limitations were built into the very way the meetings in one forum were managed: the introduction of a constitution was felt to have limited scope for more open and wide-ranging discussion within the forum.

External factors perceived to impact on the forums' effectiveness included the level of support from, relationship with, and communication between the licensing board and the forum, and public awareness.

All five case study forums received administrative support from their local councils. Some also received legal advice. Forums did not, however, necessarily have their own budgets. One forum felt that a budget would be helpful in supporting members to attend workshops and conferences to support them in their role. Another forum had begun to discuss with the board the possibility of a separate budget.

While one of the case study forums indicated a positive close working relationship with the board, others suggested a more distant relationship with their respective boards, one marked by limited contact and communication between the two bodies. One forum for example, felt that the board could do more to seek input from, and feedback decisions to, the forum, in order that the forum could more effectively inform policy. Some members also alluded to the unequal power relations between forums and boards; for one forum the board was felt to maintain control by refusing to discuss certain issues or disregarding the forum's views.

In terms of links with their local communities, forums felt that there was very little public awareness of the existence or role of the forums. Although the details of the forums may be available on council websites it was suggested that finding this information could be difficult. One forum acknowledged that they could

perhaps do more to increase awareness in order for the forum to represent 'people' more effectively, but did not have a budget for this. This forum, as well as other case study forums had however engaged in activities to improve their public profile: through contacts with community councils, support for local Alcohol Awareness events, a 'beer map campaign' distributing the forum's contact details, and putting articles in the press.

4. Next stages of the evaluation

The third stage of the evaluation comprises follow up telephone interviews with LSOs and licensing board representatives. The findings from this stage will be included in the final report of the evaluation. This is due for publication in June 2013 and will also include an analysis of the findings from across the three stages of the evaluation and present conclusions on the extent to which the licensing legislation is being implemented as intended.

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