LICENSING (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Licensing (Scotland) Bill introduced in the Scottish Parliament on 28 February 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 37–EN.

BACKGROUND

2. The licensed trade is a vital component of the Scottish economy. Employment in the drinks and hospitality sector in Scotland amounts to 200,000 people.\(^1\) Scotland benefits not only from the employment opportunities and economic benefits of brewing and distilling but also from the opportunities created in the retail sector of the industry, both by national chains and by successful independent Scottish companies. Some of our retailers and producers are at the forefront of current best practice – they and all responsible members of the licensed trade in Scotland deserve our support.

3. However, we need to recognise that misuse of alcohol does occur. This trend has been rising over a number of years and that brings with it a substantial cost to society. This may amount to medical, psychological and social harm caused to individuals and their families by alcohol dependence or to the wider costs to communities caused by the other related consequences of irresponsible drinking such as intimidation, violent crime, other anti-social behaviour and traffic casualties. The cost imposed upon the NHS in Scotland at 2002/03 prices was £110.5 million, and the total cost to Scottish society was estimated to be £1.1 billion.\(^2\)

Policy objectives of the bill

Overview

4. The Bill introduces a modern, simpler and more flexible licensing system for Scotland which seeks to reflect and meet the needs of individuals, communities, the licensed trade and consumers. However, it also provides rigorous monitoring and enforcement mechanisms.

---

\(^1\) *Pathfinder – Drinks and Hospitality*, Scottish Executive March 1999.

\(^2\) *Cost to Society of Alcohol Misuse in Scotland*, Health Economics Unit, Scottish Executive, July 2004.
5. There are four key issues that underline the approach the Executive has taken in proposing the new licensing system for Scotland. They are: reducing underage drinking, reducing binge drinking, providing a voice for communities, and modernisation.

6. Specifically the Bill aims to:
   - simplify and modernise the existing legislation (the Licensing (Scotland) Act 1976 as amended);
   - balance the rights of the majority of people who drink responsibly against the need to protect local communities from nuisance and crime associated with misuse of alcohol;
   - provide strong monitoring and enforcement powers;
   - establish a more inclusive system for all those with an interest;
   - support responsible members of the licensed trade; and
   - allow local flexibility balanced with consistency of decision making.

7. In addition, the Bill complements the wider action the Scottish Executive is engaged in. This includes steps to tackle antisocial behaviour and the programme of work set out under the Plan for Action on Alcohol Abuse, which seeks to address both under age drinking and Scotland’s binge drinking culture.

8. The Bill seeks to establish a national policy framework within which local decision making by local authority Licensing Boards would take place. It is the Executive’s intention that this desirable local flexibility is balanced with a clear, effective and mandatory national framework within which Licensing Boards would have to operate to ensure appropriate national consistency on the implementation of the policy objectives.

9. To ensure that the policy objectives of the legislation are achieved nationally the Bill sets out 5 high level “licensing objectives” that represent the values on which the Scottish licensing system would be based, the parameters against which we should measure the elements of that system and the solid foundation which local authority Licensing Boards must have regard to in carrying out their functions under the Bill. These 5 objectives are:
   - preventing crime and disorder;
   - securing public safety;
   - preventing public nuisance;
   - protecting and improving public health; and
   - protecting children from harm.

10. The Bill contains a number of measures that support these objectives and this Policy Memorandum sets out in more detail the policy behind them. Unless alternative approaches are specifically discussed, no alternatives were considered.
MAIN THEMES UNDERLYING APPROACH TAKEN TO DEVELOPING THE BILL

Binge drinking

11. This problem has been increasing over a number of years. “Binge drinking” is considered by the Executive to be the practice of drinking substantial quantities of alcohol within a short period of time. It appears that this is particularly common among people under the age of about 30 with young women now often drinking as much as young men, and it has been represented to the Executive by many consultees that it is a practice which is actively encouraged by certain bars and night clubs which engage in deep price discounting, often referred to colloquially as “happy hours”.

12. The dangers associated with excessive drinking within a short period of time are well-documented. Not only does excessive drinking of this kind have potentially harmful effects, sometimes of a serious kind, for the health of those who engage in it: it can also frequently be a trigger for behaviour which is entirely undesirable and unacceptable for the community at large, and in particular for those who live close to, or in the vicinity of licensed premises. It can lead to violence and public disorder, and, at a lesser level, it can give rise to excessive noise and disturbance to the detriment of local residents. The Executive’s concerns have been to see if there are ways in which changes to licensing law and practice can bring about some improvement.

Crime associated with binge drinking and alcohol misuse

13. A report detailing the extent of alcohol misuse in Scotland was prepared by the Scottish Executive in October 2001. This report can be viewed on the Executive’s website. This report was recently updated, and summarised below are statistics taken from this updated report that show how many custodial sentences in Scotland are alcohol related. The source of the updated figures is the Criminal Justice Statistics Unit of the Scottish Executive.

Table 1: Sentence lengths for persons receiving a custodial sentence in Scottish courts for alcohol-related offences during 2001

<table>
<thead>
<tr>
<th>Offence</th>
<th>All</th>
<th>Up to 3 months</th>
<th>3 up to 6 months</th>
<th>6 months up to 2 years</th>
<th>2-4 years</th>
<th>Average length of sentence served (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunkenness</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Drink driving</td>
<td>171</td>
<td>95</td>
<td>65</td>
<td>11</td>
<td>0</td>
<td>117</td>
</tr>
<tr>
<td>Total</td>
<td>175</td>
<td>99</td>
<td>65</td>
<td>11</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

14. The numbers of persons receiving custodial sentences for drunkenness is insignificantly small to make any meaningful comparison. With regard to drink driving, 137 people received jail sentences in 1999, with an average sentence length of 67 days. This contrasts to 171 people receiving sentences in 2001, with an average sentence length of 117 days. It is important to

---

3 Alcohol Misuse in Scotland: Trends and Costs, October 2001
4 Criminal Justice Statistics Unit, Scottish Executive
mention that the number of drink driving cases fell over the two year period (see table 3). Thus the trend shown reflects increased severity of sentences.

Table 2: Number of persons who received a custodial sentence in Scottish courts for crimes or offences during 2001 and the estimated number of persons who received a custodial sentence for crimes or offences attributable to alcohol, stratified by sentence length received and estimated number of days served

<table>
<thead>
<tr>
<th>Main crime or offence</th>
<th>Up to 4 years</th>
<th>4 years and over</th>
<th>Life</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total Number</td>
<td>Number attributable to alcohol</td>
<td>Average number of days served</td>
</tr>
<tr>
<td>Non sexual violent crime</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homicide</td>
<td>74</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>Serious assault</td>
<td>540</td>
<td>455</td>
<td>114</td>
</tr>
<tr>
<td>Robbery</td>
<td>433</td>
<td>339</td>
<td>85</td>
</tr>
<tr>
<td>Other violence</td>
<td>22</td>
<td>19</td>
<td>5</td>
</tr>
<tr>
<td>Crimes of indecency</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual assault</td>
<td>64</td>
<td>24</td>
<td>6</td>
</tr>
<tr>
<td>Lewd &amp; indecent behaviour</td>
<td>103</td>
<td>85</td>
<td>21</td>
</tr>
<tr>
<td>Other indecency</td>
<td>28</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>Crimes of dishonesty</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housebreaking</td>
<td>1377</td>
<td>1374</td>
<td>344</td>
</tr>
<tr>
<td>Theft by opening lockfast places</td>
<td>611</td>
<td>611</td>
<td>153</td>
</tr>
<tr>
<td>Theft of motor vehicle</td>
<td>371</td>
<td>370</td>
<td>93</td>
</tr>
<tr>
<td>Shoplifting</td>
<td>2382</td>
<td>2382</td>
<td>596</td>
</tr>
<tr>
<td>Other theft</td>
<td>1232</td>
<td>1231</td>
<td>308</td>
</tr>
<tr>
<td>Fraud</td>
<td>173</td>
<td>173</td>
<td>0</td>
</tr>
<tr>
<td>Other dishonesty</td>
<td>514</td>
<td>512</td>
<td>128</td>
</tr>
<tr>
<td>Fire raising, vandalism, etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire raising</td>
<td>33</td>
<td>31</td>
<td>8</td>
</tr>
<tr>
<td>Vandalism, etc.</td>
<td>266</td>
<td>263</td>
<td>66</td>
</tr>
<tr>
<td>Other crime</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crime against public justice</td>
<td>989</td>
<td>986</td>
<td>247</td>
</tr>
<tr>
<td>Handling offensive weapons</td>
<td>650</td>
<td>650</td>
<td>163</td>
</tr>
<tr>
<td>Drugs</td>
<td>896</td>
<td>765</td>
<td>191</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>Motor Vehicle Offences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dangerous &amp; careless driving</td>
<td>148</td>
<td>148</td>
<td>-</td>
</tr>
<tr>
<td>Drink driving</td>
<td>171</td>
<td>171</td>
<td>171</td>
</tr>
<tr>
<td>Speeding</td>
<td>0</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Unlawful use of vehicle</td>
<td>1043</td>
<td>1043</td>
<td>-</td>
</tr>
<tr>
<td>Vehicle defect offences</td>
<td>2</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>Miscellaneous offences</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simple assault</td>
<td>1413</td>
<td>1413</td>
<td>353</td>
</tr>
<tr>
<td>Breach of the peace</td>
<td>1140</td>
<td>1139</td>
<td>285</td>
</tr>
<tr>
<td>Drunkenness</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Other miscellaneous</td>
<td>1788</td>
<td>1786</td>
<td>447</td>
</tr>
<tr>
<td>Total</td>
<td>16476</td>
<td>16015</td>
<td>3797</td>
</tr>
</tbody>
</table>

15. In addition to considering custodial sentences secured for offences deemed to contain a degree of alcohol misuse, the Catalyst report\(^5\) charted the numbers of people pursued in the courts for crimes/offences that were attributable to alcohol. Table 3, below, shows the figures for 2001.

---

\(^5\) An Update to Alcohol Misuse in Scotland Trends and Costs (Scottish Executive, October 2001) (Published January 2005)
Table 3: Number of persons proceeded against in Scottish courts in 2001 for crimes or offences attributable to alcohol

<table>
<thead>
<tr>
<th>Main crime or offence</th>
<th>Number of persons proceeded against</th>
<th>Estimated number of persons proceeded against for crimes or offences attributable to alcohol</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-alcohol specific crimes and offences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-sexual violent crimes</td>
<td>2,677</td>
<td>669</td>
</tr>
<tr>
<td>Crimes of indecency</td>
<td>781</td>
<td>195</td>
</tr>
<tr>
<td>Crimes of dishonesty</td>
<td>25,613</td>
<td>6403</td>
</tr>
<tr>
<td>Fire raising, vandalism, etc.</td>
<td>4,782</td>
<td>1196</td>
</tr>
<tr>
<td>Other crimes</td>
<td>17,369</td>
<td>4342</td>
</tr>
<tr>
<td>Miscellaneous offences (excluding drunkenness)</td>
<td>40,076</td>
<td>0</td>
</tr>
<tr>
<td>Motor Vehicle Offences (excluding drink driving)</td>
<td>40,759</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>132057</strong></td>
<td><strong>12805</strong></td>
</tr>
<tr>
<td>Alcohol offences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drunkenness</td>
<td>406</td>
<td>406</td>
</tr>
<tr>
<td>Drink driving</td>
<td>7,133</td>
<td>7133</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>7539</strong></td>
<td><strong>7539</strong></td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>139596</strong></td>
<td><strong>20344</strong></td>
</tr>
</tbody>
</table>

Under-age drinking

16. The term “under-age drinking” is widely used in relation to the consumption of alcoholic drinks by young people. It should be made clear that it is not unlawful for people above the age of 5 years to consume alcohol. What is in general prohibited by the law is the sale or supply in licensed premises of alcohol to, or the purchase of alcohol by, those who are under the age of 18. Against that background, it is generally understood that it is acceptable for young people to be introduced to alcohol, preferably by their parents, in a responsible and gradual way - a modest glass of wine with an evening meal, a small beer at a family barbecue party, and so on.

17. What is of particular concern, however, is the growing amount of evidence that children, sometimes as young as 12 or 13, are drinking regularly in an unsupervised fashion, and often to excess. On Ministers’ behalf, the Scottish Executive Central Research Unit commissioned research which was undertaken within the context of the Edinburgh Study of Youth Transitions and Crime. That is a large-scale, longitudinal study of approximately 4,300 young people...
currently aged around 15 and attending schools within Edinburgh. Although the study is confined to young people in Edinburgh, there is no reason to suppose that its findings are not equally valid throughout Scotland as a whole. The major findings of the study are as follows:

- drinking alcohol is a common practice on the part of an overwhelming majority of Edinburgh teenagers under 18. Just over 51% admitted to drinking alcohol when they were around 13 years old, and this figure had risen to almost 84% by the time they were 15;
- almost half (48.7%) drink at least monthly or more often, with half of these drinking on a weekly basis;
- just under half (49.2%) of the respondents had purchased alcohol illegally from at least one source in the previous year;
- the most common source of alcohol for these youngsters was a small licensed grocer or corner shop, with 33.2% having purchased alcohol from one of these outlets.
- those who had purchased alcohol were more likely to drink more frequently. 41.8% of alcohol buyers drank on a weekly basis compared to 7.7% of non-buyers. Furthermore, a higher number of sources where alcohol had been purchased also meant a higher frequency of drinking;
- many of those surveyed in the study had succumbed to the adverse effects of drinking alcohol. 48.5% were unable to remember some of the things they had done on at least one occasion, and 45% reported being drunk at least once in the last year;
- the study has also found that the purchasing of alcohol, as distinct from frequency of drinking, is strongly related to delinquent behaviour.

18. One of the “licensing objectives” of the new system is the protection of children from harm. The system itself must be tested against that licensing objective including whether or not it can, as proposed, adequately deliver that protection for children. Children need protection from environments which are wholly unsuitable and they need to be prevented from being placed in a position where it is easy for them to circumvent the law and get hold of alcohol. The interests of communities would not be served by allowing any relaxation of controls which would undermine the Executive’s extensive efforts to combat under-age drinking. However, at the same time a more modern approach is needed than is currently provided for. The intention of the new legislation is to encourage licensed premises to become more child-friendly in Scotland and to encourage an environment where families can socialise safely together. It replaces the old complicated system of children’s certificates which allowed under-14s to enter a bar to eat a meal when accompanied by an adult between 11am and 8pm.

Irresponsible promotions

19. The need to tackle irresponsible promotions and the associated problems that they can cause is central to the policy objectives of the new licensing system. We recognise that not all alcohol promotions are irresponsible and that the majority of licensees act responsibly in running their businesses. However, the undesirable health and social consequences of binge and under age drinking, which can be encouraged by irresponsible promotions, are widely recognised. Current trends suggest that this is a particular problem for young women.
20. The Executive considers that “irresponsible promotions” are those promotions which actively encourage people to consume a larger quantity of alcohol in a short period of time. This may be done by cutting prices for a specified short period – happy hours – or through certain kinds of activity which offer reduced prices for drinks such as upselling (offering a cheap upgrade to a double measure from a single for example) or offering unlimited quantities of alcohol for a set price. This may also include promoting competitions based on increased consumption of alcohol.

21. This type of activity not only runs counter to the overarching objectives and values of the proposed new licensing system, it also increases the likelihood of antisocial and criminal behaviour, increases the burden on the NHS and the police caused by such behaviour and discredits responsible members of the licensed trade. It would also be unacceptable to leave unchallenged an area of activity which undermines the wider work the Executive is engaged in under the Plan for Action on Alcohol Problems, the overall purpose of which is to reduce alcohol related harm in Scotland.

Communities

22. One of the main policy objectives of the Bill must be to ensure that people have a real voice in the decisions affecting their community. This in part influenced the First Minister to set up the Working Group on Off-sales in the Community (The Daniels Committee) (see paragraph 33) to develop further some of the Nicholson Committee’s (see paragraph 30) proposals.

23. The system must also contribute to a safer, stronger Scotland. Alcohol fuelled violence and antisocial behaviour is a real and visible problem across Scotland. Research has shown that as many as three quarters of violent incidents are alcohol related. Irresponsible drinks promotions can fuel this violence and by removing these we come one step closer to protecting young people and making our town and city centres safer – helping to make Scotland a safer place in which to live and socialise. Overprovision is the root of problems being experienced by many communities where there has been no coherent overall policy in place. That is why the Bill requires Licensing Boards to conduct new overprovision assessments as part of their policy statements.

24. Against this background, it is important that the new system provides for communities to have a role in commenting on and helping to develop local policy and that an appropriate range of people have an opportunity to make their views known to the Licensing Board in relation to individual licences and licence applications.

Modernisation

25. Current licensing law in Scotland is contained in the Licensing (Scotland) Act 1976 as amended (“the 1976 Act”). There are 7 types of liquor licences currently in force in Scotland. These are: a public house licence; an off-sales licence; a hotel licence; a restricted hotel licence; a restaurant licence; a refreshment licence; and an entertainment licence. There are currently 17,000 licences in total. In addition there are 2,349 registered members clubs which sell or supply alcohol.
26. The key legislation is nearly 30 years old. It does not now reflect the shape of a licensed trade that has changed dramatically during those 30 years and continues to do so. Whilst the number of public house licences has remained more or less stable, there has been a significant rise in the number of off-sales licences (there are now 6336 as opposed to 4899 in 1980) and entertainment licences (840 now as opposed to none in 1980). The most recent statistics (2001) show an increase in refreshment licences of 34 in 1980 to 499 in 2001.

27. Existing legislation does not have the capacity to address the current issues facing society today, such as our drinking culture, binge drinking, under-age drinking and the associated problems that these issues cause. On the same theme, the current licensing regime does not adequately provide for communities to have their voices heard and for them to participate in a constructive way in the licensing process for their areas.

**Action so far**

28. Ministers are committed to tackling the problems of alcohol misuse, under-age and binge drinking and the associated problems that this can cause through a number of measures. In 1999 the Scottish Advisory Committee on Alcohol Misuse (SACAM) was established to advise the Executive on a new national strategy to tackle alcohol problems. This was as a result of the upward trend of more young Scots drinking than they ever have before, recognising the serious effects this can have, the rise in binge drinking and the harm this causes individuals and society more generally. In 2002 the Executive published its Plan for Action on Alcohol Problems, to provide a framework for national and local action in the areas of culture change, prevention and education, the provision of services and protection and control. A national communications strategy to target binge drinkers, additional funding for local alcohol action teams to build capacity for local delivery of the Plan, publication of an alcohol problems support and treatment services framework and development of 3-year local alcohol action plans are now in place. In March 2004 Ministers announced specific additional resources of £8 million in the next 2 financial years to support and implement these Plans.

29. The Antisocial Behaviour etc. (Scotland) Act 2004 received Royal Assent on 26 July 2004. Most of the provisions of that Act are now in force and the remaining provisions will be commenced during 2005. The Act introduces a number of measures designed to tackle antisocial behaviour more effectively. It is also intended to support the Executive’s strategy to bring about a step change in attitudes and behaviour. It is part of the Executive’s wider strategy for tackling antisocial behaviour, aimed at changing attitudes and behaviour, through prevention, early intervention, enforcement and rehabilitation.

**Consultation and development of the Bill**

30. In June 2001, a group under the Chairmanship of Sheriff Principal Gordon Nicholson, CBE, QC (known as the Nicholson Committee) was established by the Justice Minister to undertake an independent review of Scotland’s liquor licensing law. The Committee’s remit was to:

---

“review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public disorder; to recommend changes in the public interest; and to report accordingly”.

31. The Committee prepared a consultation paper and consulted between August and November 2001. Over 200 responses were received. Responses were received from a wide range of organisations including the Bar, Entertainment & Dance Association (BEDA), the Scottish Licensed Trade Association (SLTA), the Scottish Beer and Pub Association (SBPA), Alcohol Focus Scotland (AFS), Licensing Boards and local authorities, the Police and many others. In addition to this consultation the Committee also undertook a range of visits. These included; a late night visit, accompanied by members of Strathclyde Police, to the centres of Glasgow and Hamilton to see for themselves the dynamics of “entertainment districts”; a visit to West Yorkshire Police in Leeds; and a visit to the Northumbria Police in Newcastle. Members of the Committee’s sub-group also attended a conference on “Tackling Alcohol-related Crime and Disorder” held in London in May 2002. The Nicholson Committee published its report in August 2003, recommending a major overhaul of the liquor licensing regime.

32. In June 2003, the Executive published a consultation paper\(^7\) on proposals to tackle antisocial behaviour – *Putting Our Communities First* – which included proposals to extend police powers in relation to off-licences and some other licensing changes. The proposals reflected the major role alcohol plays in antisocial behaviour and received widespread support. However, it was recognised that it would be better to take forward all the licensing reforms together rather than including clauses on the relevant police powers in that Bill.

33. In September 2003, the First Minister established a short life working group under the Chairmanship of Mr Peter Daniels, known as the Daniels Committee. The Committee’s remit was:

“In the light of the evidence from Sheriff Principal Nicholson’s Review of Liquor Licensing and from consultation on the Antisocial Behaviour Bill, to consider the issues surrounding the regulation of off-licences and to make recommendations on:

- the scope for engagement and consultation at community level on the grant of licences; and
- management and enforcement mechanisms which will help to prevent off-licences being a focus of anti-social behaviour”.

34. The Daniels Committee reported in February 2004 with further proposals building on the approach taken by the Nicholson Committee. Ministers considered the recommendations of both the Nicholson and Daniels Committees and prepared a White Paper\(^8\) setting out the Executive’s policy proposals. The Executive undertook a consultation on the paper between June and August 2004. Copies of the paper were issued to all those who responded to the Nicholson Committee Report (over 160), to the members of the Nicholson and Daniels Committees, to the chief executives of all local authorities in Scotland and to the chairs and clerks of all Licensing Boards in Scotland. Over 120 responses were received. The Executive analysed the responses and

\(^7\) *Putting Our Communities First*

\(^8\) *The Liquor Licensing (Scotland) Bill – A Consultation on Liquor Licensing*
prepared a detailed report on the consultation which was made available on the Executive’s website and sent to all those who responded.

35. The Executive held a number of meetings with interested groups throughout 2003 and 2004 during the period of consultation and after. This included meetings with representative organisations including the SLTA, The British Beer & Pub Association, BEDA, the Scottish Retail Consortium (SRC), the Scottish Grocers Federation (SGF), the Association of Convenience Stores, the Scottish Wholesalers Association, the Scottish Council for Voluntary Organisations (SCVO) and representatives of Registered Clubs. Meetings were also held with Church organisations and the Cinema Exhibitors Association. Details of the range of meetings the Executive held and the conferences at which the Executive was represented are set out in the Annex to this Memorandum. Both the Nicholson and Daniels Committees included representatives from a number of the above associations, who took an active part in the debate.

36. To further assist in the development of policy leading towards the drafting of the Bill and to provide expert advice, the Executive established an Expert Reference Group under the Chairmanship of the Scottish Executive, with representatives from Licensing Boards, the licensed trade, health, communities and the Police. The provisions in the Bill are broadly based on this advice and the recommendations of both the Nicholson and Daniels Committees.

THE BILL

THE NATIONAL POLICY FRAMEWORK

Policy objectives

37. A key component of the proposed new licensing system set out in the Bill is that it provides local flexibility to deal with local circumstances. However, to ensure consistency of approach, it is important that this local flexibility is balanced with a clear, effective and mandatory national framework within which local authority Licensing Boards would be required to operate.

Licensing Boards

38. Licensing Boards were introduced by the Licensing (Scotland) Act 1976 and replaced the previous Licensing Courts. They are currently responsible for the administration of liquor licensing in Scotland. Ministers consider that licensing, local in nature and a process carried out in the interests of the community, requires a body answerable to the electorate for the exercise of its functions. Licensing Boards, made up of local authority councillors, meet this requirement for local democratic accountability. Section 46(1) of the Local Government (Scotland) Act 1994 provides that “a Council may determine whether their area shall be divided into licensing divisions for the purposes of Licensing (Scotland) Act 1976”. This power has proved useful in large diverse rural areas where one Board would be insufficient. For example, Highland Council has established 8 Boards. The Bill retains this power.

39. Licensing Boards’ structure would remain broadly similar to what it is now. However, there were a number of concerns raised, particularly by the licensed trade, that it can be intimidating to appear before the whole Board as this can amount to more than 15 Board
members. The City of Glasgow Licensing Board currently has over 20 members. These numbers lead to formal processes which many people appearing before Boards appear to find intimidating and difficult to understand. Boards as currently constituted can also be unwieldy and inflexible due to their size. In view of this, the Bill sets out proposals to restrict Boards to a maximum of 10 members, with a minimum of 5 members and a quorum of 3. The Executive feels this is perfectly adequate to allow the diversity of a local area to be reflected but is far more manageable.

40. Current legislation prescribes the frequency of Licensing Board meetings and these are fixed at quarterly intervals per year. In keeping with the approach of modernising the system, this appears too restrictive in terms of dealing with the business when it arises rather than to a pre-determined timetable that may not suit every Board. The Bill therefore removes the requirement for quarterly meetings. In future, Boards may decide themselves when and how often to meet. However, the Executive recognises the need for applicants to have some certainty about when their application would be progressed and therefore proposes to set out in regulations the timescales in which certain categories of Board business should be completed. In addition, schedule 1 sets out powers allowing the delegation of functions other than certain specified functions which must be dealt with by the Boards themselves.

41. The point has been made that there is a need to continue to ensure that there are arrangements in place to deal with attempts by applicants to influence the decisions of Licensing Boards. We intend to retain the arrangements under the 1976 Act and the Bill provides that an applicant seeking to influence the Board’s decisions would be guilty of an offence. It is not proposed to make any special provision in legislation relating to objectors seeking to influence Board members since the Code of Conduct established by the Ethical Standards in Public Life etc. (Scotland) Act 2000 applies to members of Licensing Boards as it does to all Councillors in the normal way. The Code was established to ensure that the highest standards are maintained in public life.

42. Much of the current procedural provisions relating to Licensing Boards are scattered throughout the Licensing (Scotland) Act 1976. This makes it difficult for applicants and members of the public to establish with any certainty the procedures which must be followed in relation to the current different types of licence application. In line with our aim of modernising the current system, detail on much of the procedure to be followed by Licensing Boards in dealing with applications and objections would be simplified and set out clearly in regulations. Inclusion of procedural elements in regulations would also allow more flexibility for those procedures to be further updated should the need arise in the future.

**Board constitution**

43. Schedule 1 to the Bill sets out more detail related to the proposed constitution of the Boards. However, in summary, this includes such issues as election of members, disqualification, tenure of office, chairing of meetings, training of Board members and other administrative matters. However, an important change in the new system would be that the convener of the Licensing Board would not now have to be re-elected annually. The current system can mean that although the convener can potentially change every year, members of Boards remain for the full period until the next council election. It makes sense to introduce a greater degree of continuity to the way Boards are chaired. The new system provides for the convener to remain
in post as the members currently do until the next council election, unless, for those reasons set out in the Bill, they were removed from office.

**Licensing policy statements**

44. Licensing Boards would have an important new duty under the Bill to prepare and adopt licensing policy statements which would provide a broad indication of how the Board intends to carry out its functions under the new system. Policy statements would have a 3 year duration although a supplementary statement may be made during that period. In preparing these statements, Licensing Boards must ensure that their policy seeks to promote the licensing objectives.

45. Boards would be required to consult, and have regard to any views expressed by the licensing forum for the Board’s area.

46. To ensure consistency of approach the Executive intends to give guidance on the sorts of issues the policy statement must cover. It is expected that this would include a range of issues such as policy on opening hours (to the extent that this can be set out in general terms), policy on nuisance and safety issues connected with late opening, approach to issuing occasional licences and policy on overprovision.

**Overprovision**

47. Overprovision can be the root of problems being experienced by many communities where there has in the past been no coherent overall policy in place. Overprovision in a “locality”, whether this is a street, several streets or a Council ward, can lead to an increased level of problems associated with misuse of alcohol. This may take the form of nuisance issues such as noise and broken glass in the street, intimidation by those entering or exiting licensed premises or increased violence and crime. Licensing Boards would now be able to block new licences in areas which they consider to be at or beyond saturation point to ensure that the potential for these undesirable consequences is limited.

48. This is a crucial element in the new licensing system. Licensing Boards would be required to make a proactive assessment of local provision of licensed premises in consultation with the police, local communities and the licensed trade. Boards must then include in the policy statement, a statement as to the extent to which the Board considers that there is overprovision in any locality within their area. Boards would themselves determine what amounted to a “locality” for this purpose and the Executive believes this should be as flexible as possible to reflect the very different pressures which may apply in different geographical areas throughout the country. There would also be flexibility for Boards to decide, for any locality, whether there was overprovision generally in relation to licensed premises or only in relation to a particular identifiable sector. The proposed National Licensing Forum, described later in paragraph 57, would be asked to provide early advice to Ministers on what constitutes overprovision and how it should be tackled. Ministerial guidance would then set out the national policy.

**Local Licensing Forums**

49. Another key local element of the new system is that it should provide an effective mechanism for members of local communities to make formal and informal views known to the
Licensing Board. This is achieved by the requirement that for each local authority area a Local Licensing Forum must be established. The Forums would be governed and appointed by local authorities. The Bill provides that local authorities must seek to ensure that so far as possible the membership of these Forums should be representative of persons or descriptions of persons who have an interest which is relevant to the Forum’s general functions. Those would be:

- holders of premises licences and personal licences;
- the chief constable for the police area in which the Forum’s area is situated;
- persons having functions relating to health, education or social work;
- young people; and
- persons resident within the Forum’s area.

50. This is set out in schedule 2 to the Bill.

51. The local Licensing Standards Officers would also be members of the Forum, providing an important link to the operation of the system. Board members may also be invited to attend or to speak to the Forum. There would be a requirement for a minimum of one formal meeting between the Board and Forum annually.

52. Links should also be established with the Local Alcohol Action Teams who are responsible for developing the local alcohol action plans to reduce alcohol related harm. A member of that team might be invited to sit on the Forum.

53. The remit of the Forum is to keep under review the operation of the licensing system in their area and to give advice and recommendations to the Licensing Board. This does not however include reviewing or offering advice or recommendations in relation to any particular case before the Board. To facilitate this, the Forum is to be provided with copies of any relevant statistics which have been requested from any relevant source by the Board.

54. The Board would have a statutory duty to “have regard” to the Forum’s view and must offer reasons where it decides against the advice of the Forum.

**Guidance**

55. As part of the overarching national framework for the new system, the Scottish Ministers would issue guidance to Licensing Boards on carrying out their functions. Issues that would be covered in the guidance would include, for example, guidance on the policy that Licensing Boards should adopt with regard to licensing hours; guidance on what would constitute overprovision; and guidance on how to operate the licensing objectives and the standard national licence conditions. The guidance is expected to be a comprehensive document which would be consulted on widely. A draft would be laid before the Scottish Parliament using affirmative resolution procedure. Licensing Boards would be required to have regard to this guidance.

56. In addition, Ministers may decide to develop specific guidance for local Licensing Forums to help them to understand their role and fulfil their remit. The Bill makes suitable provision for this.
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

National Licensing Forum

57. There is widespread support for some form of national body which would oversee the new licensing system, providing expert advice and guidance to Ministers and Licensing Boards to ensure consistency of approach and to provide assistance on detailed issues of implementation of the new regime. There is no equivalent body which can carry out these functions at present. It is proposed that Ministers would establish a National Licensing Forum.

58. The Bill does not provide for the establishment of a statutory National Licensing Forum as primary legislation is not required to set it up. This new National Licensing Forum would be designated as a Task Force and initially established for 2 years with a review of its effectiveness beginning after 18 months. Appointments to this new body would follow the principles of the Code of Practice on Public Appointments. It is not intended that this body would have either a budget or its own staff - it is an advisory arrangement and would work actively with Ministers. The Forum would be jointly chaired by the Deputy Minister for Finance and Public Service Reform and the Deputy Minister for Health and Community Care, and the Scottish Executive would provide the secretariat.

Consultation

59. Whilst the consultation responses showed the majority were in favour of the continuation of Licensing Boards made up of local authority members, there were some requests for a wider representation of other interested parties on Boards or an alternative National Licensing Body.

60. Just under two thirds of respondents to the White Paper addressed the issue of setting a maximum membership for Boards at 10, with three quarters of the comments supportive of a maximum of ten. There appeared to be concern amongst those who agreed with the question about the minimum of five for a sitting of the Licensing Board and, across respondent types and across positive and negative answers, about the quorum figure of three, which were both deemed to be too small. All who provided an opinion on why they opposed the proposal felt that ten members was too low a number. Responses focused on the need for flexibility, avoiding internal conflict and ensuring a range of views were represented.

61. While the majority of respondents were happy to forgo electing a Convener or Chair every year, a number wished the annual election to continue.

62. Most respondents agreed with the proposals regarding the removal of fixed quarterly meetings and the delegation of certain tasks to clerks. Some respondents stressed the need for flexibility.

63. With regards to Licensing Board policy statements and the frequency with which they should be reviewed, many suggested that policy should be constantly evolving, with a corresponding need for flexibility allowing statements to be reviewed regularly. There were mixed suggestions for the duration of statements, some for 2 years others for 3 years. Most did not give a specific reason but some mentioned that a 3 year period would better allow Boards to assess whether stated policy was working as intended, and would bring practice into line with England and Wales. On the requirement to undertake an overprovision assessment there was
some concern particularly from those in the trade as to how this would undertaken and what would constitute overprovision.

64. On objectors attempting to exert undue influence, the majority of respondents were Licensing Boards and felt that this needed further consideration. It would be difficult to ban constituents from talking to their own councillors and in any case this might be unnecessary in light of the Councillors’ Code of Conduct in which councillors would have to declare an interest and stand down from the relevant Board meeting.

65. There was some concern about the proposal by the Nicholson Committee that local authorities should no longer be entitled to hold licences in their own name. The majority of councils who responded and COSLA disagreed. There were concerns about cost and the implications for small businesses. The Nicholson proposal was based on an assessment of the implications under the European Convention on Human Rights (ECHR). However, we are satisfied that there is no ECHR reason to prevent this policy continuing.

66. Local Licensing Forums attracted a high degree of support. However, more clarity was requested on membership, the specific relationship with the Board and how such Forums were to be financed.

**Alternative approaches**

**Licensing Boards**

67. Consideration was given to replacing Licensing Boards with some kind of new tribunal composed of representatives from a range of bodies and organisations with an interest in the operation of licensing law. This could include representatives from the licensed trade, local residents’ groups, the police, public health and others. However, local councillors, who make up the membership of Licensing Boards under the current and proposed new system, have a unique knowledge of the locality which they represent and, moreover, are ultimately answerable to their constituents at the ballot box. Bearing in mind the proposal to involve other interests through the new local licensing forums, the Executive does not feel that moving to a new tribunal system would be a worthwhile investment. The Executive therefore takes the view that the system of local Licensing Boards should be retained.

**National Licensing Forum**

68. Two different options were considered.

- **Option 1 - Establish as a Task Force** - Task forces can be established for up to 2 years and would then be subject to restructuring or dissolution. They are appropriate where there needs to be regular ministerial direction and input. These types of groups are generally short-life bodies limited to no more than 2 years before reporting and disbanding, or requiring re-designation. This option is appropriate where the function to be carried out is of limited duration. Appointments would be expected to follow the principles of the code of practice on public appointments. Civil servants could provide the necessary administrative secretariat.

- **Option 2 - Establish a NDPB** - Non-departmental public bodies are normally established by legislation when a function needs to be distanced from Ministers and
work within a framework of controls. A full public appointments process, strategic direction and forward plan set by Ministers, framework document setting out roles and responsibilities and a published annual report laid before Parliament are all required of NDPBs. They are generally bodies which carry out regulatory functions on behalf of government which need to be free from political interference and which therefore require a considerable degree of autonomy.

69. Regular ministerial direction and involvement in the Forum is an important element of the process and as such the independent nature of an NDPB would not be appropriate. The NDPB model also requires a separate budget and staff to fulfil its functions. In this case a Task Force is considered the most appropriate mechanism. A review would be undertaken after 18 months on the role of the Task Force and its future.

**LICENCES**

**Policy objectives**

70. There are currently seven different types of licences. These are - a public house licence; an off-sales licence; an hotel licence; a restricted hotel licence; a restaurant licence; a refreshment licence; and an entertainment licence. This system is confusing and unhelpful and lacks the flexibility to deal with modern trends in the hospitality sector. In some cases this categorisation also provides a loophole which allows premises to drift or develop beyond the original purpose envisaged by the grant of the licence.

71. For example this might happen where a hotel licence has been granted in the past on the basis that the premises would be used primarily as a hotel with a small bar area for patrons. However, this bar area may be gradually extended to such an extent that the hotel is operating essentially as a large public house with a few letting bedrooms attached.

72. The Bill proposes to replace the current system with a simpler, more modern licensing system based on two licences – a *premises licence* and a *personal licence*. Anyone wishing to sell alcohol on any premises, with the exception of small events run by voluntary bodies, must hold a premises licence and each premises must have at least one personal licence holder (the “premises manager”). In addition to those premises currently licensed under the existing regime (hotels, public houses, nightclubs, restaurants, cafes and off-licences) the Bill would also bring the following categories of premises within the new regime to a greater or lesser extent:

- **Private members clubs** – the Scottish Minister would be provided with a regulatory power to exempt very small clubs should they meet certain conditions set out in the Bill. In general this would mean that these clubs would be exempt from the requirement to have a premises manager, and exemption from the “overprovision assessment” that would be carried out by local authority Licensing Boards.

- **Trains** – Railway vehicles are classed as ‘exempt premises’ however, the Bill provides for the prohibition of sales of alcohol at specified stations or on any railway vehicle travelling between specified stations for a specific period. An order may be made by the sheriff on the application of a senior police officer (a constable of or above the rank of inspector), if the sheriff is satisfied that the order is necessary to prevent disorder. The term constable is used as a legal term meaning any officer of...
the police service. A copy of the order must be sent to the train operator (or each train operator) responsible for the railway vehicle. It would be an offence knowingly to sell alcohol, or to permit the sale of alcohol in contravention of such an order.

- **Vessels, vehicles and moveable structures** – The provision for premises licences would apply to a vessel not permanently moored or berthed in a particular place as though they were premises situated at the place where they are normally moored or berthed. A vehicle or moveable structure – e.g. tent or inflatable building – which is not permanently located in the same place, would be treated as a premises located at any place where it is parked or set. So if licensable activities are carried out on or from the vehicle when it is parked, a premises licence would be required, and where such activities take place when it is parked in more than one place, the vehicle or moveable structure would be treated as if it were separate premises at each location and, therefore, separate premises licences would be required. A train would not require a licence every time it stops at a station when it is engaged in a journey even if this was a lengthy delay due to adverse conditions.

- **Motorway Service Stations and Petrol Stations** - Alcohol sales would be prohibited from motorway service stations and petrol stations. However, there would be flexibility to ensure that community stores/petrol stations in rural areas would not be adversely affected where they provide a community resource other than just for petrol.

- **Wholesalers** would be exempt from the licensing system for trade only sales but would be included in the system for all sales by retail. This means that where a wholesaler sells to the public the wholesaler must obtain a premises licence. It would be an offence for a wholesaler to sell alcohol from any premises other than that which is used wholly for the purposes of wholesales.

- **Seamen’s canteens** are run by charities to provide an alternative to hotels and pubs for seamen. The Executive agree with the Nicholson Committee that there is no particular reason to exempt them from the premises licence. However, as they are staffed by volunteers, the staff would be exempt from a requirement to undergo formal training other than some basic training by a personal licence holder.

- **International airports and ports** - There would be a power for Ministers to exempt “examination stations” and “approved wharfs” at these premises from the licensing regime if it appears to them that the airport or port is one at which there is a substantial amount of international passenger traffic.

73. The Bill provides for certain premises to be exempt from the licensing regime and these premises would be known as “exempt premises”.

**The premises licence**

74. The premises licence would be a single form of licence for any premises which sells alcohol, each licence being tailored to the type of premises in question by reference to a compulsory “operating plan” and a “layout plan” of the premises, drafts of which would be lodged by the applicant. The operating plan would clearly set out the applicant’s proposals including the activities that would be undertaken on the premises, opening hours and their policy...
in relation to access for children. The layout plan of the premises would show, for example the bar area, if appropriate, seating arrangements and other things such as areas suitable for children.

75. Premises licence applications must also be accompanied by the relevant certificates as set out in the Bill. These are:
   - a planning certificate;
   - a building standards certificate; and
   - a food hygiene certificate.

76. The premises licence would not require renewal every three years as is the case currently. It would now run for as long as the premises continue to operate in compliance with the licence and operating plan. In considering all premises licence applications, Licensing Boards must have regard to the 5 high level “licensing objectives” set out in the Bill.

77. The single premises licence is an important improvement on the current position. It replaces the current complicated system of 7 different types of licences in Scotland. It is important that as part of the new system, when a licence is being granted, a Licensing Board and the local community should know with some certainty the kind of operation which would be permitted in terms of the licence, and that an operation of that kind should be adhered to by the licence holder thereafter. Given the nature of the grounds on which an application for a licence may be refused, it is of the utmost importance that, when deciding whether or not an application for a licence should be granted, a Licensing Board should be able to be reasonably satisfied that the kind of operation for which a licence is being sought would remain substantially unchanged once a licence has been granted.

78. It is in everyone’s interests (including those of the licence holder) that the precise nature of the licensed operations is prescribed with clarity at the stage when the licence is first granted. It is for this reason that the time is now right to depart from the present system of seven ill-defined types of licence to a system where each licence would clearly state the nature of the operations which may be undertaken by the licence holder.

79. It is intended that there would be a standard form on which an operating plan for licensed premises can be submitted to the Board. The form and content of this plan would be prescribed in regulations and would in essence be part of the licence application.

Variations

80. Variations of the terms of the licence can be applied for, but would, for everything except a minor variation, be subject to a full procedure of notification, objections and representations and agreement by the Board. The Bill sets out those issues considered to be “minor variations”.

Transfers

81. A person may, in relation to any premises licence, apply to the Licensing Board which issued the licence for the transfer of the licence to another person. The detail on the procedure for transfers is set out in the Bill.
Grounds for refusal of premises licences

82. It is proposed that, even in the absence of an objection(s), a Licensing Board would be obliged to consider an application for a premises licence on its merits, and, if it concludes that the licence should not be granted, it would be able to take that course. The Bill sets out statutory grounds on which Licensing Boards may refuse the licence. These are:

- that the subject premises are excluded premises;
- that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives;
- that, having regard to—
  - the nature of the activities proposed to be carried on in the subject premises,
  - the location, character and condition of the premises, and
  - the persons likely to frequent the premises,
  the Board considers that the premises are unsuitable for use for the sale of alcohol; and
- that having regard to the number and capacity of:
  - licensed premises, or
  - licensed premises of the same or similar description as the subject premises in the locality in which the subject premises are situated,
  the Board considers that if the application were to be granted, there would, as a result be overprovision of licensed premises, or licensed premises of that description, in the locality.

83. It is the Executive’s intention that any offence created as a result of the smoking ban and directed at licensees would be designated as a ‘relevant offence’ under the Licensing (Scotland) Bill. A conviction for a ‘relevant offence’ could impact on eligibility for a licence and would act as a trigger for the review of a licence. The Smoking, Health and Social Care (Scotland) Bill, which sets out the Executive’s policy on a smoking ban, was introduced to the Scottish Parliament on 16 December 2004.

84. The procedure on objections and representations is dealt with under the communities section of this Memorandum in paragraph 104.

Standard national licence conditions

85. It is crucial that standards in the licensed trade should be maintained at a high level and should not be undermined by an increase in competition under the new system. To ensure consistency of standards and on key issues identified as requiring a national approach, schedule 3 to the Bill sets out those standard licence conditions that would be a mandatory requirement under this Bill.

86. In addition Licensing Boards would be able to choose from a range of additional discretionary standard national licence conditions that would be applicable to premises licences according to the activities that would be undertaken on the premises. In summary, those other
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

standard national licence conditions currently proposed for regulations would cover the following areas:

- **Late opening premises** – consultation respondents proposed either 11pm or 12 midnight as a time from which the Board should be obliged to consider additional appropriate licence conditions. Ministers propose 12 midnight since this was also supported by the Scottish Executive’s Expert Reference Group. A pool of discretionary conditions is proposed from which Boards may choose all or none according to the type of premises and which cover issues relating to public safety and nuisance such as door staff, use of and disposal of glass, CCTV and drugs policies.

- **Off sales** – Boards would have specific power to impose a discretionary condition requiring the provision of separate display areas for alcohol for those premises where that would be appropriate. To avoid placing a heavy burden on small corner shops, this would be a voluntary condition.

- **Adult entertainment** – a range of mandatory conditions is proposed for any premises offering adult entertainment such as CCTV, display of rules of behaviour for customers and staff, door staff and provision of showering and changing facilities.

- **Access by children to all licensed premises** – there would be one mandatory condition relating to the provision of baby changing facilities accessible to both sexes unless children under 5 are not to be admitted.

87. The memorandum to the Subordinate Legislation Committee gives more detail on the proposed mandatory and discretionary licence conditions.

**Members clubs**

88. Clubs would be brought within the new licensing system and dealt with by the relevant Licensing Board. Accordingly, they would be required to have a premises licence, an operating plan and a premises manager. In the majority of cases, the premises manager would be a member of staff employed by the club to run its bar. However, we recognise that for a number of small clubs, bar facilities and the supply of alcohol is a minor part of their activities and it would not be feasible for them to undergo the cost of training attached to appointing a premises manager. Ministers would, therefore, have a power by regulation to exempt clubs from having to have a premises manager. The decision to exempt would be subject to further detailed discussion with clubs but could be based, for example, on bar turnover or the number of club members.

**The personal licence**

89. The new personal licence is intended to ensure that anyone managing premises is suitably qualified to do so. Each premises must have a **“premises manager”** who is named on the premises licence as the person responsible for running that premises. The emphasis is on ensuring appropriate training, both in the applicable law and in how to deal with customers. For this reason, we expect the personal licence to become a recognised qualification held by those pursuing a career in the licensed trade. More detail on training is set out under the training section of this Memorandum in paragraph 142.
90. The new system moves away from the moral judgement of who is a “fit and proper person” as required under the Licensing (Scotland) Act 1976. However, it is important that an effective system is in place to enable Boards to ascertain whether or not someone is a suitable person to hold a personal licence. In that respect, to be eligible for a personal licence, a person must be over the age of 18 and not have been convicted of any relevant offence or forfeited a licence in the past 5 years. Those relevant convictions are to be set out in regulations. The personal licence would remain in force for a period of 10 years, with the possibility of renewal for further periods of 10 years thereafter. English and Welsh personal licences would not be transferable to Scotland under the proposed system due to likely differences in the recognised relevant convictions and training requirements. However, appropriate training carried out elsewhere may be recognised if it is considered to be equivalent to the Scottish training. The Bill contains provisions to this effect.

Occasional licences

91. Licensing Boards would be able to grant occasional licences on application from a premises licence holder, a personal licence holder and a representative of any voluntary organisation made in relation to any premises (other than licensed premises) within the Board’s area, authorising the sale of alcohol in the course of e.g. catering for an event. Occasional licences would have a duration of no more than 14 days and the number of licences that may be granted in a year to a voluntary body has been increased. These licences would be subject to the appropriate standard national licence conditions and any local conditions as the Board may determine. Ministers may by regulations make further provision as to the form of applications for occasional licences and the licence conditions.

Consultation

92. There was broad agreement that the current licensing system needs to be simplified, although several contributors believed that there should continue to be some differentiation between different types of establishments, in particular certain sections of the licensed trade, on the grounds that they believe that their removal would encourage a growth in irresponsible promotions through increased competition between different sector operators. Personal licences were broadly supported although further clarification was sought on the holder’s specific role and responsibility. With regard to the proposed standard national licence conditions, three quarters of respondents commented. In principle, there was strong support for this idea, across the range of consultee types. The vast majority of supporters qualified their responses with a plea for flexibility. Those in partial agreement drew attention to the particular needs of rural communities, the difficulties that would arise in attempting to devise a set of national conditions suitable for rural and urban locales, and that Licensing Boards should be able to add conditions they deemed necessary. It was also noted that any conditions should be free of jargon and as clear as possible.

Alternative approaches

93. The Scottish Licensed Trade Association (SLTA) and the Bar, Entertainment and Dance Association (BEDA) have proposed that there should be a system of 3 licences, covering on-sales, off-sales and entertainment instead of the single premises licence. They feel this more accurately reflects current differentiation in the market and wish to prevent increased competition leading to more irresponsible promotions. However, a 3 licence approach would
require the retention of the system of permitted hours and extensions developed in the 1970s – clearly a backward step. The existing system, 10,000 out of 17,000 licence holders having to apply for regular extensions of their opening hours, does not work. Furthermore, the new single licence proposed under the Bill provides the necessary flexibility needed for the future for a sector which has already developed beyond the restrictive categories of “public house” or “nightclub”.

94. “Hybrid premises” are a new and acknowledged part of the market and generally operate as a “pub” during the day and “nightclub” in the evening. More pubs are expanding the food side of the business becoming “gastro pubs”. Licensed delis now often operate a café and need both on and off-sales licences.

95. Any new licensing system needs to be equipped to deal with these and other changes in the licensed trade. In the Executive’s view, the only differentiation which is required is in relation to those premises wishing to open late at night due to the need for such premises to be more focused on preventing nuisance and ensuring public safety. We believe a suitable compromise has been put forward with our proposal to attach additional licence conditions to premises wishing to open after 12 midnight.

**LICENSING HOURS**

**Policy objectives**

96. The current system of “permitted hours” was introduced by the Licensing (Scotland) Act 1976. A system of opening hours for off-sales premises known as “trading hours” is also prescribed. The current permitted hours for licensed premises other than off-sales are: Mon.-Sat 11.00am-11.00pm and on Sundays 12.30pm-11.00pm. For off-sales, trading hours are as follows: Mon.-Sat. 8.00 -10.00pm and on a Sunday 12.30pm-10.00pm. The Act also sets out a system that allows licensees to apply for extensions of these standard hours. The types of extension available are: occasional extensions, regular extensions and extensions for table meals. Extensions are not available to the trading hours for off sales premises.

97. The use made of this system of permitted hours and extensions has changed dramatically over the years. The original intention was that extensions to standard opening hours would be granted infrequently, for example in certain holiday resorts and at peak holiday periods. The reality today, however, is that regular and lengthy extensions to statutory permitted hours are so widespread that the whole concept of permitted hours has very largely been eroded. 10,000 of the current 17,000 licensed premises in Scotland operate with regular extensions to the standard permitted hours. The Bill introduces a more modern approach and gets rid of the practice of giving extensions in favour of clarity up front about acceptable hours. There is a presumption in the Bill against 24-hour licensing hours. A holder of a licence would be required to specify their hours in their operating plans submitted to the Licensing Board for approval and drawn up with regard to the Board’s published policy statement, which would set out the Board’s general approach to policy on licensing hours for their area. The Board’s policy statement might, for example, draw attention to the conditions likely to be attached to premises seeking to open after 12 midnight, set out views on opening over the festive period or during key local holidays or events and set out general views on the latest opening hours likely to apply in certain
circumstances. Policy contained in the Board’s policy statement would, of course, have been discussed with the local licensing forum, including police, trade and community interests.

98. On receipt of an application for a premises licence or any variation of hours requested following the initial grant of a licence, the Board can (having also followed the procedure for objections and representations):

- authorise the hours applied for; or
- authorise other hours that appear to them to be appropriate having regard to the licensing principles and their general policy.

99. There is little or no argument for any premises to routinely sell alcohol throughout the day and night and routine 24-hour opening is not the intention of the new licensing system.

100. Licensing Boards would be entitled to agree exceptions to that policy in specific limited circumstances and where this suits local conditions. However, whilst it may be appropriate for Boards to take the view that a particular premises should be granted longer opening hours, they would be expected to offer justification for that decision. The circumstances in which exceptions can be made would be set out in the statutory ministerial guidance. We expect this to be directed at special occasions and events.

Consultation

101. Most Licensing Boards supported the proposal towards the removal of permitted hours - other views were divided. Concerns were expressed about the potential for longer opening hours than at present. The Scottish Licensed Trade Association (SLTA) and the Bar, Entertainment and Dance Association (BEDA) are strongly opposed to the removal of permitted hours. They believe that this would increase competition and lead to further irresponsible promotional activity. The Scottish Grocers Federation also opposes the removal of permitted hours - they would like to retain and extend the permitted hours for off-sales. The Scottish Council for Development and Industry supported the abolition of permitted hours and discretion for local Boards. They also suggested that the National Licensing Forum could take a strategic overview across the country.

102. Some of those agreeing with the proposal to remove permitted hours included conditions and qualifications in their comments. Despite general agreement, in principle, that there should not be round the clock opening, it was thought that the presumption should not be enshrined in statute. Round the clock facilities like ferry and air terminals were deemed appropriate exceptions and it was thought that ‘limited exceptions’ would be difficult to define.

103. A minority (nearly half of which were Boards) opposed the proposal largely on the grounds that this should be left to the discretion of the Board based upon local knowledge and not statutory guidance. Off-sales and trade representatives made the point that many people are now working irregular times, so they often do grocery and other shopping outside of the current permitted hours.
COMMUNITIES

Policy objectives

104. The Bill provides for better and more effective community engagement in the system. The proposals in the Bill for allowing representations and objections to licence applications are widely drawn and allow for any person to object and make representation to the Licensing Board. The Bill prevents frivolous or vexatious objections. Licensing Boards would also be under a duty to consult with, amongst others, local residents in the area for which they would carry out their overprovision assessment of licences.

105. This would be supplemented with a system where those with a specific interest are given direct notification of a licence application i.e. the community council, chief constable, fire authority, the local authority and each person having a notifiable interest in neighbouring land to the premises. Furthermore, in order to provide as much information as possible to local communities, applicants would be required to place a notice outside their premises for 21 days giving notice of their proposed licence application and providing the community with information on the time limit permitted for objections and representations. It is proposed that the National Licensing Forum would design a standard A3 form that must be used for this purpose. In addition, until Licensing Boards are able to advertise applications on their websites, it would continue to be a requirement to advertise in the local press.

106. The community role is relevant not only to the grant of licences but where problems arise with existing licences. Communities would have a further opportunity for engagement through the establishment of Local Licensing Forums. As stated earlier in this Memorandum, the membership of those Forums should be as representative as possible of all those with an interest in the licensing system. This may include representation from the local community council but it may also include relevant local residents groups or interest groups. The Forum provides a real opportunity to influence developments in the local area as a result of its role in being consulted on Board policies, including the overprovision policy. It is also there as a means to establish an active and continuing local dialogue on licensing matters. The success of such bodies can be demonstrated by the Forums already running effectively on a voluntary basis, for example in Edinburgh, Glasgow and South Ayrshire.

107. The proposed new Licensing Standards Officer would also provide a new route for mediation between local communities and licensees, addressing any local difficulties directly and working to resolve them at the lowest level, avoiding pursuit of a formal complaint unless that proves necessary.

Consultation

108. The majority of those who were consulted were supportive of the Nicholson Committee’s recommendations to extend the range of people or bodies that can object. Most also felt that the suggested changes remained restrictive, with suggestions for extending the range of possible objectors to premises users and to local elected members including MSPs and councillors. Others suggested that any individual or group of individuals should be free to make an objection if they were affected in any way by the granting or alteration of a licence. With regards to those who should receive statutory notice of licence applications, local factors such as street layout,
pedestrian travel routes, transport, expected noise, and the rural or urban character of the area were cited as needing consideration.

**MONITORING AND COMPLIANCE**

**Policy objectives**

*Licensing Standards Officers (LSOs)*

109. It is vital, if the new licensing system is to meet the high level objectives, that there is an enforcement mechanism to ensure effective monitoring and compliance. The Bill, therefore, proposes a new system of Licensing Standards Officers to supervise and monitor the new system, co-operate with licensees, and report licence breaches to the Board. They would also have statutory powers of entry to all licensed premises. These officers would be independent of Boards and be employed by local authorities. They would have 3 clear roles:

- **Guidance** - Power to act as a source of advice and guidance for licensees and for the community.
- **Mediation** - Power to 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.
- **Compliance** - To supervise compliance by the holders of premises licences or occasional licences in respect of premises in the area with the conditions of their licence and other requirements of the Bill. This could also include monitoring the implementation of a ban on smoking in licensed premises if this is introduced following consideration of the Smoking, Health and Social Care (Scotland) Bill.

110. The National Licensing Forum would advise Ministers on the appropriate qualifications for those posts and also develop a national job description setting out in detail what their specific remit should be.

111. The Bill also provides that LSOs may, for the purpose of determining whether the requirements of the Bill are being complied with, exercise the following powers in relation to other premises on which alcohol is being sold or is suspected of being sold:

- power to enter the premises at any time; and
- power to carry out such inspection of the premises and of any substances, articles or documents found there as the officer thinks necessary.

*The premises licence*

112. With regard to the sanctions that would be applied to premises licences, it is acknowledged that Licensing Boards need more options and that the current legislation does not deliver those options. This is to the detriment of everyone working within the licensing system - both for licensees, who should be entitled to a warning in some circumstances and for communities, who have a right to expect that effective action would be taken in response to the breach of a licence. The compliance and sanctions structure for premises licence holders would be as follows:
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

- mediation and guidance carried out by the LSO;
- written notice carried out by the LSO where a breach of a licensing condition had occurred;
- where a licence holder had not complied with a written notice from the LSO, then an application by the LSO or other persons could be made to the relevant Licensing Board to have the premises licence reviewed; and
- review hearing would then have to be held where a review of the licence was considered by the Licensing Board.

113. Following an oral hearing the following range of sanctions could be applied by the Licensing Board:
- issue a written warning to the licence holder where there has been a breach of a licensing condition;
- make a variation to the premises licence;
- suspend the premises licence for a period as the Board may determine; or
- revoke the premises licence.

114. Ministerial guidance for Boards would be issued on how to operate the compliance and sanctions scheme.

115. In the case where there is a suspension of a licence pending a hearing by the sheriff of the appeal, Ministers have taken account of the range of views and the alternatives put forward by the Nicholson Committee and Daniels Report. The Bill provides for immediate closure where the Board decides that licence suspension or revocation is the correct sanction. However, where a licence has been suspended, the Executive is consulting with sheriffs principal to ensure that a hearing to recall the suspension pending the appeal can be held promptly.

The personal licence

116. Licensing Boards’ more pro-active role would include having the means of ensuring that personal licence holders, and in particular those designated as being in charge of operations in particular premises, are carrying out their duties in a responsible and acceptable manner. Personal licence holders would be under a duty to notify their Licensing Board of any convictions for a relevant or foreign offence for the purposes of this Bill. The courts would also be under a similar obligation to notify Licensing Boards should a personal licence holder be convicted of a relevant or foreign offence in Scotland. Should a personal licence holder be convicted of a relevant offence, the Licensing Board would hold a hearing in order to determine whether the personal licence should continue in force. Should the Licensing Board consider it necessary for the promotion of the licensing objectives it would be able to make an order that would:
- revoke the licence;
- suspend the licence for a period not exceeding six months; or
- endorse the licence.
117. Where a personal licence holder has not been charged or convicted of any offence but is found by the Licensing Board to have failed to carry out his or her duties in an acceptable manner consistent with the licensing objectives, the Board would hold a hearing. Should the Licensing Board consider it necessary for the promotion of the licensing objectives it would, as in the previous circumstances, be able to make an order that would:

- revoke the licence;
- suspend the licence for a period not exceeding six months; or
- endorse the licence.

118. Any endorsement would be capable of being taken into account by the Board in the event of it having to consider any subsequent failure on the part of the licence holder. An endorsement would no longer be capable of being taken into account after the expiry of a period of 5 years. Should a personal licence holder gain 3 current endorsements, the Licensing Board would be required to hold a hearing at which it may, if it considers it necessary, suspend the licence for such period not exceeding 6 months or revoke the licence.

119. On their own, endorsements would not prevent the renewal of a personal licence.

120. Where a personal licence holder has been convicted of a relevant offence, the appropriate Licensing Board would notify the chief constable to seek advice from them. The chief constable may make a recommendation to the Board that the personal licence should be revoked, suspended or endorsed where there is a conviction and the police feel that in the interests of the crime prevention licensing objective a sanction is merited.

121. The Bill sets out a number of criminal offences which could be committed with regard to the sale of alcohol. However, it does not impose criminal sanctions for non-compliance with the licensing regime.

Police powers and closure orders

122. It is proposed that police powers should be increased. The current licensing legislation, the 1976 Act, provides powers of entry at any time for a constable to inspect any licensed premises other than an off-licence. The constable may enter an off-licence only if he or she has grounds for believing that an offence has been or is being committed on those premises. Section 86 of the 1976 Act confers a similar right of entry in respect of unlicensed premises where food or drink is sold for consumption on the premises or on which there are reasonable grounds for believing that alcoholic liquor is being trafficked unlawfully. However, the power of entry under section 86 is not to be exercised by a constable below the rank of inspector unless he has the authority in writing of a justice of the peace or of a constable of or above the rank of inspector; and any such written authority remains valid only for a maximum of eight days. Finally, under this heading, section 114 of the 1976 Act makes provision for a constable to enter the premises of a club only where a justice of the peace or a sheriff, having heard evidence on oath, has granted a warrant authorising such entry.

123. There is little rational justification for such a variation in powers of entry, even under the present licensing system. Under the new system, however, there would be no justification for
making distinctions, for example, between what are currently described as on-sales and off-sales premises, or between clubs and other premises selling or supplying alcohol. There would be a single premises licence which would not, except in the terms of individual licences, make distinctions of the kind which exist at present. The Bill therefore provides that a senior police officer should have a lawful right of entry to any premises in respect of which a premises licence is in force.

124. The Bill also retains power for a senior police officer to apply to a Licensing Board to close licensed premises in the interests of public safety, and extends this to provide an additional mechanism for the police themselves to authorise immediate closure in the interests of public safety. This is set out below:

A senior police officer may, if the officer reasonably believes that—
(a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,
(b) closure of the premises is necessary in the interests of public safety, and
(c) the risk to public safety is such that it is necessary to do so immediately and without making an application to the relevant Licensing Board,
make a closure order in relation to the premises.

125. The Bill also makes provision for extensions of closure orders in certain circumstances. The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders.

Exclusion orders

126. The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the courts to make an exclusion order against a person, if they are found guilty of a violent offence committed on licensed premises (other than an off-licence). In light of the concerns that were raised during the consultation on the Antisocial Behaviour (Scotland) Bill about off-licences and how they can become focal points for antisocial behaviour, and in order to support responsible licensees, it is appropriate that under the new system, exclusion orders should be extended to include off-licences. The Bill, therefore repeals in its entirety the 1980 Act and provides that, where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises, the court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering:
(a) the licensed premises concerned, and
(b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.

127. Further to this the Bill also provides that the premises licence holder for the licensed premises concerned may themselves, by summary application to the sheriff made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from
entering the licensed premises concerned. The Bill sets out those conditions that must be considered by the sheriff.

Consultation

128. A majority of consultation respondents agreed that there should be Licensing Standards Officers provided there is clarity over their role and funding. There was universal agreement on exclusion orders and extending police powers of closure. Some felt that LSOs should not be employed by Boards on the grounds of integrity and impartiality, the question being posed of how an LSO could give evidence to a body of which they were an employee. One consultee raised concerns about the exact role of the LSOs in terms of the hours and patterns of work they would have and whether they would have legal powers to call on police back-up.

129. On premises licences, most respondents were largely in favour of a range of sanctions. The need for there to be a clear range of sanctions was highlighted and suggested "first level" sanctions included verbal reprimand, warning letter, orders for retraining and the provision of guidance. A few suggested the introduction of a points system similar to the one for driving offences: different sanctions would attract points depending on their severity, and the accumulation of a particular number of points would prompt more serious action. A couple suggested following the sanctions set out in the Licensing Act 2003 for England and Wales.

Alternative approaches

130. With regard to the suspension of licences, consideration was given to allowing premises to remain open where a licensee has decided to appeal and wishes to seek the recall of that suspension pending disposal of the appeal. This means that the decision of the Board to close the premises would not take effect until after the court hearing to avoid unduly penalising small businesses. Ministers have taken account of the range of views on this. However, whilst Ministers appreciate the pressure closure (or the withdrawal of alcohol sales) may put on a small business, this would not be a decision which is taken lightly by Boards. The new system would require Boards to give reasons for decisions and to act in a proportionate manner. It would, in addition, require Boards to follow procedures (as set out above) which give licensees the opportunity to remedy an emerging problem before suspension or revocation becomes an option.

IRRESPONSIBLE PROMOTIONS

131. The Bill sets out a new national policy designed to target irresponsible alcohol promotions by way of applying a standard national licence condition to all premises licences. Details are contained in schedule 3 to the Bill. We consider that there is a clear need for a national lead on this issue and for national consistency to set a framework for the future. We believe that one of the most effective ways to tackle promotions is to tackle price. Such policies, based on minimum pricing and non-differential pricing, have already been trialled successfully in Scotland. The Bill sets out in the form of a national licence condition for premises licences a "non-differential" pricing policy which requires licence holders to maintain their price list for a minimum of 48 hours. Prices may only be decreased or increased on a 48 hour frequency. This type of policy currently operates in Glasgow and also in the Republic of Ireland. This would automatically rule out "happy hours" and even "happy days" and would, in our view,
immediately prevent a range of undesirable activities which encourage binge drinking at certain times of day.

132. However, we do not feel that this policy is sufficient in itself to prevent other generic types of promotion such as upselling, a fixed amount for all you can drink and free drinks linked to entry fees. Schedule 3 to the Bill also provides that the national licence conditions applicable to irresponsible promotions would ban a defined list of generic promotions. Power is provided for Scottish Ministers to update this list by modifying the schedule as required in light of experience gained once the Bill is implemented.

133. We do not believe that this policy can presently be extended to off-sales promotions in the absence of any concrete evidence to suggest that purchasing a large quantity of alcohol in an off-licence is linked to immediate consumption and to binge drinking. However, we accept that there is anecdotal evidence, particularly in relation to drinking by young people, to suggest that large quantities of alcohol purchased in an off-sales may be taken home to drink as a precursor to a night out and may encourage binge drinking. The powers set out in the Bill to modify the mandatory licence conditions and prescribe additional discretionary licence conditions will allow us to extend the control of irresponsible promotions to off-sales if we decide, after further consideration, that this is merited.

134. In addition to our proposals for direct action to tackle irresponsible promotions, the Bill provides a range of other measures that would also help to crack down on unacceptable commercial activity leading to binge drinking and the subsequent problems that this can cause for individuals and communities. In summary these are:

- **Licence conditions to suit specific circumstances** – power for Boards to modify licensees operating plan, determine the suitable opening hours and apply a wide range of conditions to a licence;

- **Fewer licences in areas which have reached saturation point** – Boards to conduct new overprovision assessments and block licences where there is considered to be saturation (in accordance with guidance from National Forum);

- **Tough enforcement** – where premises is a focus for disorder a range of sanctions can be applied from modifying any licence condition including opening hours to suspension or revocation of the licence; and

- **It would continue to be an offence to serve someone who is drunk** – but supplemented with this becoming a “relevant offence” for the purposes of the new scheme. Relevant offences are those offences which will be set out in regulations and would result in the initiation of a licence review and may lead to the application of sanctions.

**Consultation**

135. There was a high level of support although there was concern about how this could be defined in legislation and effectively monitored. Many comments highlighted the need for a definition of “irresponsible behaviour”, some noting how difficult this would be to achieve. The need for localised consideration of the problem and a degree of flexibility were highlighted, so that Boards could assess borderline cases in light of local knowledge and tackle novel ways of
circumventing any national conditions by unscrupulous promoters. One respondent made the important point that broader factors which encourage irresponsible drinking should be controlled such as the use of loud music to make conversation difficult, encouraging faster drinking, and the effect of national advertising campaigns on people’s attraction to a product. There was general agreement that any provision should also apply to off-sales. The Bar, Entertainment and Dance Association recommends the Perth and Kinross approach to a minimum price tariff as a licence condition. There was also some support for price control from health interests. A few respondents warned that not all promotions should be treated the same; an exception might be responsible “all-inclusive” deals or a pub quiz prize of a bottle of whisky. One considered that there should be a standard condition in all premises licences banning advertising that could encourage excessive consumption.

Alternative approaches

136. 3 options were considered to deal with irresponsible promotions:

- **Option 1: Wide definition of irresponsible promotions** - The approach favoured by the Nicholson Committee and generally based on a definition that seeks to avoid promotions that encourage excessive consumption in a short period of time (binge drinking). This broad definition would require extensive national guidance on what exactly constituted an irresponsible promotion and there would very likely be differences in approach between Boards leading to promotions treated as being acceptable in some areas of the country but not in others. This in turn would be likely to lead to a series of court challenges.

- **Option 2: Minimum price scheme** - The use of price schemes is favoured by many, including some sectors of the licensed trade. Under this option each Licensing Board would be required to initiate a scheme which set the minimum price that could be charged for various kinds of alcoholic drink. Two Licensing Boards had already set up such a scheme which applied to on-sales only. The advantages are that it is a simple and effective means to control promotions without relying on a vague definition and is a means to avoid inconsistency between Boards. However, it does not rule out happy hours and it would be a difficult task for Boards to set appropriate prices. Aberdeen Board recently attempted to set higher minimum prices than others and this decision was successfully challenged by two pub and nightclub operators. This has led to the withdrawal of other minimum price schemes.

- **Option 3: Standard national licence conditions** - It would be possible to use standard national licence conditions alone to ban licensees from carrying out a range of specified promotions. This has the attraction of being very precise but the disadvantage of being rather inflexible as an overall approach. It is highly likely that there would be problems with the definition leading to inconsistencies across the country.

137. In our view it is appropriate in light of the overall objectives of the Bill that price controls form part of the new national approach to tackle binge drinking. They are an effective way to impose controls which are clear, easy to understand and operate and leave no doubt as to what action licensees must take. Non-differential pricing has the advantage that it automatically rules out happy hours and avoids Boards having to set specific minimum prices. It is therefore less intrusive as an approach. It can also be applied to all premises including those that
traditionally charge lower prices – members clubs (including student unions, working men’s clubs, golf clubs etc). We feel that the combination approach we are proposing would be the most effective way to rule out the full range of activities that we feel are presently contributing to Scotland’s binge drinking culture.

UNDER-AGE DRINKING: CHILDREN AND YOUNG PEOPLE

Policy objectives

138. The Bill sets out a range of provisions relating to the protection of children. These are:

- **All licensees to be required to operate on a no proof no sale basis where there is any doubt that a young person is over 18.** This would involve the display of appropriate signage and accreditation by the Scottish Executive in regulations of types of “acceptable proof”.

- **Requiring licensees offering an on-sales service to think actively and seriously about whether their premises are suitable for children by choosing whether to “opt in” to access by children.** This must include consideration (within the operating plan for the premises) of whether children would be accompanied or unaccompanied, suitable hours of access and in which areas to allow that access. To avoid the creation of unnecessary hurdles to children’s access the only mandatory licence condition would be the provision of baby changing facilities accessible to both sexes where children under 5 are to be admitted. For off-sales, operation of a no proof no sale system would be sufficient to allow access by children.

- **Overhauling the existing offences in relation to underage drinking.** The Executive proposes to create wider offences – it would be an offence for anyone to sell alcohol to a child anywhere and an offence for anyone under the age of 18 to buy or attempt to buy alcohol anywhere. It would remain an offence for anyone to purchase alcohol on behalf of a child. The Executive does not propose to criminalise consumption of alcohol by a child except where this takes place on licensed premises or other premises on which alcohol is lawfully sold. The Bill retains a provision allowing 16 and 17 year olds to consume beer, wine, cider and perry with a meal.

Consultation

139. Two thirds of all consultees provided a response, with almost all in agreement with the Executive’s proposals. Two who were in partial agreement came from off-sales which believed that there should be a provision for easy opt-in by their sector. Dissenters generally did not provide reasons for disagreement except for one Licensing Board feeling that this should be a matter for local interpretation. Some who agreed felt that there should be flexibility for local variation and a move away from the current restriction on children being unable to eat in premises after 8 pm, especially in areas with a reliance on tourism. Conditions relating to the suitability of the premises for children, in relation to eating, play and no-smoking areas were suggested.
**Alternative approaches**

140. The Nicholson Committee recognised and attempted to address the complicated provisions which currently regulate the access of under 18 year olds to licensed premises and which were supplemented in 1990 by the introduction of a system of children’s certificates. Those certificates allow under-14s to enter a bar area to eat a meal when accompanied by an adult between 11am and 8pm. The report proposed the removal of the current provisions and that instead there should be a statutory presumption that under 18 year olds have a full right of access to licensed premises subject to restrictions set out in the operating plan. It was proposed that premises be able to choose to opt-out. The report also recommended the preparation of standard national licence conditions by the National Licensing Forum.

141. Our intention is to make licensed premises more child-friendly in Scotland and to encourage an environment where families can socialise safely together. However, we do not feel that Scotland is ready for “café society”. Many licensed premises are completely unsuitable for children and we would have very strong reservations about bringing forward a system which has as its basic premise the idea that all licensed premises are suitable for children.

**TRAINING**

142. In order to achieve and maintain the 5 “licensing objectives” proposed for the new system, everyone is entitled to expect the highest standards from those within the licensed trade and in particular those with responsibility for the selling of alcohol to the public.

143. An important mechanism by which standards can be maintained and indeed raised is staff training. It is not sufficient merely to encourage such training without any capacity to monitor whether adequate training or any training at all is being delivered. Training should rightly be seen as a fundamental element of the new system. The Bill, therefore, provides for the following range of mandatory training requirements:

**Licensing Board members**

- Training should be mandatory. Board members should be required to undertake any course exam and to pass that exam;
- This training would be accredited. Process for accreditation and details of accredited schemes to be set out in regulations;
- Members to complete training within 3 months and may not act as Board members until training completed and (if relevant) exam passed.

**Personal licence holders**

- Training is mandatory to national standard;
- This training would be accredited. Process for accreditation and details of accredited schemes to be set out in regulations;
- Refresher training to be undertaken every 5 years and failure to do so to result in licence being revoked;
Must produce to the Licensing Board for their area not later than 3 months after the expiry of the period of 5 years beginning with the date on which the personal licence was issued, evidence of completion of training;

Where the personal licence itself has expired and an application for renewal is pending, evidence would have to be provided that refresher training has been carried out prior to renewal.

Staff serving alcohol

Training to a national standard for all permanent staff serving alcohol would be a mandatory premises licence condition. The provisions for training of those persons serving alcohol, other than a personal licence holder, are set out in schedule 3 to the Bill.

The process for accreditation and details of accredited training schemes would be considered further by the new National Licensing Forum and set out in regulations. This is intended to include both accredited external training courses and accredited in house training delivered by a personal licence holder who is a qualified trainer. The provision of training is to be specifically monitored by the new Licensing Standards Officers who would have access to training records under the general powers set out in the Bill. This may also be considered further by the National Licensing Forum.

Consultation

A majority of consultation respondents were in favour of Board member training being mandatory but agreed that there should be special provision to cover the period after a Council election. This could be done by delaying meetings or imposing a time limit. The AFS Servewise course was identified by four trade representatives and one individual as the potential basis for a national standard. Most agreed that casual staff need not undertake training but that there should be a clear definition of “casual” to avoid licensees using this as a loophole.

FEES

The current licence fee is £160. The current system is intended to be self financing and we intend this to continue with a new regime based on seeking full cost recovery through the licence fee. However, the fundamental building blocks of the new regime to which fees can be attached would of course be quite different. Our proposals provide for a new system of 2 licences – the personal licence and the premises licence. In addition, the premises licence would be of open ended duration and the personal licence would be valid for 10 years. The 7 existing types of licence are valid for 3 years and are then subject to renewal.

As a reflection of this new system, we support the principle of graduated fees set at different levels for different categories of premises and for a retention fee paid annually to ensure a continuing stream of income. Some fees may still be one time fixed fees eg fees for personal licences and fees for occasional licences.

The Bill, therefore, provides the Scottish Ministers with a power to make regulations that would set out those matters relating to licence fees. A Licensing Board should be able to refuse to process an application unless it is accompanied by a fee which the Scottish Ministers have set.
and a Board should be entitled to recover any fees owed. Ministers would be placed under a specific duty to consult with the relevant bodies before implementing a fee increase. We are conducting a full fee review to ensure that fees can be set at a suitable level to fund the new system and ensure full cost recovery. Results of this review would be made available to the Parliament in due course.

149. Further detail on fees is set out in the Financial Memorandum.

Consultation

150. A majority agreed that the system should be self-financing although there were concerns about the cost of Licensing Standards Officers and suggestions for annual retention fees. Views were evenly split on whether fees should be set centrally or locally. Some felt that fees for a self-financing system should be set locally to reflect cost differences based on geography and number and categories of premises. There was broad agreement that we should establish different fee levels for different types of premises but further work was needed on how that should be done.

Alternative approaches

151. Consideration was given to the issue of whether to set fees locally or centrally. We feel that consistency in fee setting would be important and that this can only be achieved through centrally set fees within a coherent national framework. Although local costs may be different, the number of licences and fee income would also vary substantially. These are issues that will be looked at in the proposed fee review to be undertaken by the Scottish Executive.

APPEALS

152. Under the Licensing (Scotland) Act 1976 an appeal lies to the sheriff by summary application against some decisions of a Licensing Board. A further appeal may be made to the Court of Session but only on a point of law. On other decisions the available procedure is judicial review.

153. The Nicholson Report noted that the present system is unacceptably slow and recommended that appeals should in future be heard by a sheriff principal by stated case to allow for quicker disposal. This is because in some cases, many months elapse between the marking of an appeal and it actually being heard by a sheriff. This is particularly unacceptable where a licence has been suspended under the 1976 Act on the basis that it is in the public interest, but the licensee is then able to continue in business for a very long time simply by marking an appeal which would take many months to be disposed of.

154. Our proposed approach broadly follows the recommendations made in the Nicholson Report. Appeals mechanisms must be robust and effective. The Bill sets out the proposed appeals process. In summary, the Bill allows for an appeal to be made to the sheriff principal against any decision (other than a procedural decision) of the Board in relation to a licence application. Further to this where a complaint is made to a Licensing Board in relation to any licensed premises, then the person who made the complaint, or the holder of the premises licence for the premises in relation to which the complaint is made, may appeal for the same reasons.
would also allow for the Licensing Board whose decision is appealed to be party to the appeal. The Bill provides that the grounds on which a Licensing Board’s decision may be appealed are that, in reaching the decision, the Licensing Board:

- erred in law;
- based their decision on an incorrect material fact;
- acted contrary to natural justice;
- exercised their discretion in an unreasonable manner; or
- where the decision is to impose any sanction, that the sanction imposed is disproportionate in all the circumstances.

**Consultation**

155. Around 20 comments were received on these proposals, mainly in support. There were concerns that allowing all Board decisions to be open to appeal would result in a strain on Board resources. It has also been suggested that under a stated case process, recording of Board proceedings should be mandatory to ensure a factual record for appeals based on incorrect material fact.

**Alternative approaches**

156. Consideration was given to the idea of creating a new appeals tribunal to deal with licensing appeals. A suggestion was put forward that there should be a tribunal consisting of a legal chairman and two lay members. However, given that currently there are relatively few appeals that have to be dealt with, and even allowing for a possible rise in that number in the first few years after implementation of the new system, it was not considered appropriate or justifiable to set up a costly new tribunal.

**TRANSITIONAL ARRANGEMENTS**

157. The Bill contains enabling powers to allow the Scottish Ministers to make regulations about the transitional arrangements towards the new regime. This is necessary because there has been no consultation on the form of transitional arrangements and consultation is required specifically with Licensing Boards and the licensed trade. The Bill is only the first stage towards implementation of the new regime. A considerable amount of additional work will be required, including the development of regulations and guidance.

158. Concerns have been expressed by both Licensing Boards and the licensed trade about transitional arrangements in general and about “grandfather rights” in particular. The latter is a concept introduced by the Licensing Act 2003 (for England and Wales) which allowed existing licence holders to retain a licence subject to the same conditions agreed under the old (1964) licensing regime. Parts of the licensed trade feel that existing licence holders must be allowed to retain all their current conditions of operation, including opening hours, and therefore be given a licence under the new system that retains and reflects those conditions granted under the 1976 legislation.
159. We will be considering the best way to transfer existing licences onto the new system. There are various ways to do this which can be discussed and developed with Boards and the trade. This could include a fast track procedure for existing licence holders. It is certainly not our intention to put legitimate members of the licensed trade out of business. However, we do have concerns that adopting a form of “grandfather rights” which essentially amounts to retention of the existing 1976 regime, will lead to the creation of a two tier licensing system. There is a need to see concrete change as a result of the introduction of the new system in order to tackle binge and under age drinking.

160. The key is to ensure that existing licence holders and Licensing Boards are given sufficient time and information to enable them to adapt to the new system. The Scottish Executive intends to hold consultative discussions with interested parties about transitional arrangements, exploring all of the options. These discussions will continue as the Bill progresses through its Parliamentary stages.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

161. The measures in the Bill are intended to introduce a more open and accountable licensing system providing greater opportunity for community engagement. The Bill also sets out measures that would contribute to safer communities and to the protection of children. Public bodies, and in particular local authority Licensing Boards who would operate the licensing system, would be expected to carry out their functions in ways which comply with the duties placed on them by the Race Relations (Amendment) Act 2000 and the related Race Relations Act 1976 (Statutory Duties) (Scotland) Order 2002. In other words, local authorities, in proposing appointments to the Local Licensing Forums, and Licensing Boards when dealing with licence applications and other procedures, or in requesting anyone to appear before them, should do so in ways that eliminate unlawful racial discrimination, promote equality of opportunity, and promote good race relations.

162. It is also important to stress that the new licensing legislation supports the Executive’s wider agenda in tackling alcohol misuse through a number of different initiatives and also supports the policy behind the Antisocial Behaviour etc. (Scotland) Act 2004.

Human rights

163. It is considered that the provisions of the Bill are ECHR compatible. In support of this, it is mentioned that licensing regimes in relation to alcohol were recently considered by the House of Commons Joint Committee on Human Rights when they looked at similar proposals to those in this Bill in relation to what became the Licensing Act 2003 for England and Wales. The Committee took the view that any regime for regulating the supply of alcohol, and for licensing the premises for the sale of alcohol in them, interfered with the freedom of owners of premises to use them for the sale of liquor, and with the freedom of owners of intoxicating liquor to sell it; and hence interfered with the right to peaceful enjoyment of possessions under Article 1 of Protocol 1. However, the Committee accepted the Government’s argument that licensing was justified under the proviso to that Protocol in that there was a clear public interest in regulating
the sale and public consumption of alcohol in view of the potentially damaging effects of alcohol on individual health and safety and on public order.

164. Although licensing of alcohol generally is thought to be ECHR compatible, Sheriff Principal Nicholson thought that there were two specific potential ECHR problems with procedures under the current regime in the 1976 Act. The Report recommended that local authorities should no longer be able to hold licences in their own name (Recommendation 21). At paragraph 6.2 of the Report, Sheriff Principal Nicholson said that the Committee was “in no doubt that the present system which allows authorities to hold licences is plainly open to challenge under ECHR”, and equally they considered that “any new legislation which countenanced and permitted such a thing would be open to challenge under section 29 of the Scotland Act 1998 …”. The concern was that the Licensing Board was appointed by the local authority and it would not be fair for that Board to make a decision for a licence held by the local authority. This it was thought would be incompatible with Article 6 of the Convention. Similarly, Sheriff Principal Nicholson also recommended that local authorities should not be allowed to be objectors if they were the licensing authority (Recommendation 33). Again the concern was that the Licensing Board could not be an independent and impartial Tribunal for the purposes of Article 6.1 of the Convention, if it was deciding on a matter in which it had an interest.

165. The Executive has considered these points against the current ECHR jurisprudence. The Executive thinks that it is questionable whether Article 6 rights are engaged in the two situations described above. However, even if that Article is engaged, it is not thought incompatible with Convention rights for local authorities to be granted licences in their own name or to be objectors. Licensing Boards are administrative and quasi-judicial bodies and the leading cases all stress that the totality of the decision making process, including the availability of an appeal or a judicial review in the courts against a first instance decision by a body is what matters. It is thought that the availability of judicial review is sufficient to render the two procedures ECHR compatible.

Island communities

166. The provisions of the Bill allow for local flexibility within an overarching national framework. The new licensing system would not affect the island communities in any detrimental way. Rather the increased flexibility to recognise local circumstances would be beneficial for island communities who would be able to tailor licence conditions to their own requirements. Rural communities in general can also be expected to benefit from our proposals to increase the number of occasional licences that may be granted to voluntary bodies in a year. This would include, for example, village hall committees.

Local government

167. Local authorities are key players in the implementation of the proposals set out in the Bill. They would be directly responsible, as they are currently, for the administration of Licensing Boards. Under the legislation they would have a new duty to employ at least one Licensing Standards Officer for their area whose responsibility it would be to supervise and monitor the new system. Further information on the requirements being placed on local government as a consequence of the new legislation is set out in the Financial Memorandum.
Sustainable development

168. The Scottish Executive is committed to sustainable development. Ministers published a paper in April 2002. This paper made clear that environmental and social justice are central to Ministers’ views of sustainable development. This Bill includes proposals that support social justice and the interests of local communities. The Bill provides for better engagement with communities in the granting of liquor licences and also introduces enforcement powers for Licensing Boards and the police to tackle areas of related antisocial behaviour. These measures would contribute to safer and more sustainable communities by addressing the kinds of problems that can degrade the surrounding environment, potentially undermine the local economy and lead local communities to feel excluded from shared public spaces.

*Meeting the Needs: Priorities, Actions and Targets for Sustainable Development in Scotland*
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

ANNEX

Meetings held by Scottish Executive officials:
Scottish Grocers Federation and SPAR – 6/2/03
Scottish Licensed Trade Association – 15/10/03
Thresher (off-licence chain) – 14/11/03
Clerk to Edinburgh Licensing Board – November 2003
Scottish Borders Licensing Board – 18/11/03
Visit to Grampian Police, Aberdeen – 20/21 November 2003
British Entertainment and Dance Association – 16/12/03
Gordon Nicholson (Chair Nicholson Committee) – 12/12/03, 13/1/04 and 18/3/04
Diageo (Alcohol Producers) – 16/3/04
Edinburgh Licensing Board, Glasgow Licensing Board, North Lanarkshire Licensing Board, Renfrewshire Licensing Board, South Lanarkshire and Dundee Licensing Boards – 30/3/04
Aberdeen Licensing Board – 21/11/03 and 30/3/04
Association of Convenience Stores – 4/5/04
Apostleship of the Sea, Glasgow - 27/07/04
Scottish Wholesalers Association – 17/8/2004
Scottish Council for Voluntary Organisations – 3/9/04
CAMRA – 3/09/04
Members Clubs – 18/8/04 and 26/11/04
Visit to Lothian & Borders Police – 8/10/04
Scottish Beer and Pub Association – 8/12/03 and 30/10/04
Cinema Exhibitors Association – 10/12/04
Alcohol Focus Scotland – 11/03 and 15/02/05

Meetings between Ministers, SE and Trade:
Licensee of Moskito Bar, Glasgow & Scottish Licensed Trade Association – 9/7/04
Proprietor of Parkstone Hotel, Prestwick/Scottish Licensed Trade Association/British Entertainment and Dance Association/ British Beer and Pub Association/Scottish Grocers’ Federation and Scottish Retail Consortium – 9/8/04
Belhaven Brewery – 24/08/04
SLTA Dinner – 26/10/04
Paul Smith, Castle Leisure Group and Sportsters Bar, Edinburgh – 5/11/04
Scottish Licensed Trade Association – 5/11/04
Visit to Molly Malone’s Pub, Glasgow – 2/12/04
British Entertainment and Dance Association – 16/12/04
Scottish Retail Consortium - 21/12/04
Scottish Grocers Federation – 21/12/04
Scottish Beer and Pub Association – 30/10/04, 11/1/05 & 18/1/05
Alcohol producers, Diageo, Coors, Tennents Caledonian, Scottish Brewers, Belhaven, Anheuser-Busch, and Allied Domecq – 2/2/05

Government:
Department of Culture, Media and Sport – 12/2/04

Conferences attended by either SE Officials or Ministers:
Scottish Licensed Trade Association – 20/2/04
South Ayrshire Licensing Conference – 10/5/04
Mackay Hannah Licensing Conference – 17/5/04
Anheuser-Busch (Budweiser) – 26/5/04
Licensing Law & Practice – 23/09/04
Association of Alcohol Action Teams - ?
Servewise (Alcohol Focus Scotland) – 2/12/04

Seminars:
Alcohol Focus Scotland – 19/9/04

Dates of meetings of SE Expert Group:
1/6/04, 21/6/04, 29/6/04, 5/7/04, 9/7/04, 14/7/04, 28/7/04, 16/8/04, 1/12/04 and 7/2/05.
LICENSING (SCOTLAND) BILL

POLICY MEMORANDUM


Applications for reproduction should be made in writing to the Licensing Division, Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.