MEMORANDUM ON DELEGATED POWERS

LICENSING (SCOTLAND) BILL

Purpose

This memorandum has been prepared by the Scottish Executive to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Parliament’s Standing Orders, of provisions in the Licensing (Scotland) Bill 2005. It describes the purpose of each of the Bill’s provisions and the reasons for seeking the proposed powers.

Policy context

The provisions in the Bill are broadly based on two independent reports. Those reports are:

- the Report of the Nicholson Committee - established in 2001 - “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”; and

- the Report of the Daniels Committee - established in 2003 - “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 better 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 antisocial behaviour”.

On 17 May 2003 Ministers also published a White Paper: The Licensing (Scotland) Bill – “A Consultation on Liquor Licensing”. The Licensing (Scotland) Bill seeks to establish a modern licensing system for Scotland which reflects the needs of individuals, communities, the licensed trade and consumers. The proposals in the Bill complement the Executive’s approach to tackling antisocial behaviour and the Plan for Action on Alcohol Abuse, but at the same time improve the environment for social drinking. The Bill establishes a framework under which local authority Licensing Boards will have the flexibility to deal with local issues. However, this is balanced with a clear, effective and mandatory national framework within which those Boards must operate. The proposals in the Bill are underlined by a philosophy provided through 5 statutory licensing objectives. These objectives represent the values on which the new Scottish licensing system is based, the criteria against which the system should be measured and to which Boards must have regard in carrying out their functions under the Bill.

Secondary Legislation

The Nicholson Committee, in their report, argued that, since drinking habits and associated problems relative to public health and public order can change very quickly, it is desirable that there should be a means whereby further legislative intervention of an informed kind can
take place with a minimum of delay. The Committee noted that many of their consultees felt that it was undesirable that a matter as important as liquor licensing law and practice should be subject to review at only very infrequent intervals.

They also noted that purely procedural provisions are scattered throughout the Licensing (Scotland) Act 1976, resulting in a situation in which it is often difficult to establish with certainty the procedures which must be followed. In addition to the difficulty of locating and interpreting relevant procedural provisions in the 1976 Act, any changes can be made only by amendment by further primary legislation. The Committee saw a clear advantage in providing for procedural matters to be dealt with by way of secondary – rather than primary – legislation: where practice, experience or changing social trends indicated a need for change, this could be achieved much more quickly by secondary legislation.

A further advantage of setting certain procedures out in secondary legislation, as opposed to allowing Boards to make their own rules, is the contribution this will make to national consistency within the system and the advantage this has for business and for the public in understanding, for example, how to make applications and objections.

The Nicholson Committee also recommended that, to ensure the system was kept under review and could reflect emerging problems and concerns, there should be a National Licensing Forum which would offer advice to Ministers. We are committed to establishing this forum, but this will not be a statutory body (ie neither primary nor secondary legislation is required to set it up). One of the first duties of this forum will be to give advice on the Guidance to be distributed to Licensing Boards about the new system. This Guidance, in line with section 133 of the Bill, will be laid for approval by affirmative resolution before the Scottish Parliament.

**Outline and scope of the Bill**

The Bill covers all aspects of liquor licensing and is split into 9 Parts.

**Part 1 Core provisions**

Part 1 provides an interpretation of the terms “alcohol” and “sale of alcohol” for the purposes of this Bill and contains the prohibition on the unlicensed sale of alcohol.

**Part 2 Licensing bodies and officers**

Part 2 provides for the continuation of current Licensing Boards as the bodies which will be, as before, responsible for all matters relating to granting of licences under the licensing regime. It also provides for the establishment of new Local Licensing Forums, which will allow representation of local interests, and for the appointment of Licensing Standards Officers, who will be employed by local authorities to police licensed premises to make sure they operate in accordance with their licence and to provide a source of mediation and advice for both local communities and the licensed trade.
Part 3  Premises licences

Part 3 introduces the new premises licence established by this Bill and sets out the framework for consideration of the grant or refusal of applications for licences and for determination of applications for variations, reviews and transfers of premises licences.

Part 4  Occasional licenses

Part 4 sets out the procedure for application and determination of the grant or refusal of occasional licences for special events.

Part 5  Licensed hours

Part 5 establishes the new licencing hours regime which replaces the concept of “permitted hours” under the Licencing (Scotland) Act 1976. It also sets out the criteria against which the granting of any “24-hour” licences must be considered by Licensing Boards.

Part 6  Personal licences

Part 6 introduces the new personal licence established by this Bill and sets out the framework for the grant or refusal of applications for these licences. It also provides for circumstances under which personal licences can be revoked and a requirement for mandatory training for personal licence holders.

Part 7  Control of order

Part 7 sets out the conditions and procedure under which closure orders and exclusion orders for licensed premises can be made in the interests of public safety.

Part 8  Offences

Part 8 sets out offences with respect to the sale of alcohol to children or young persons, the purchase of alcohol by children or young persons, the delivery of alcohol to children or young persons, the purchase of alcohol by or for a child or young person and requesting a child or young person to purchase alcohol. It also places a duty on premises licence holders to display a notice on the premises setting out the policy in relation to no proof no sale. Other offences in this part are those relating to sales of alcohol by wholesalers, the carriage of alcohol on public service vehicles, deliveries of alcohol from vehicles, and keeping smuggled goods. There are also powers to prohibit alcohol sales in service stations and late night deliveries of alcohol.

Part 9  Miscellaneous and General

Part 9 deals with a number of miscellaneous and general matters. In summary, these are provisions covering matters such as fees for licences, definitions of relevant offences and foreign offences for the purposes of the Bill, powers to issue statutory guidance, the procedure that would be adopted for orders and regulations made under the Bill, interpretation of terms used throughout this Bill and repeals of existing legislation by schedule 5 to the Bill. This part also sets out the appeals process that would be introduced by
this Bill. Powers of entry for the police to licensed premises are provided, as are procedural matters relating to any hearing held under the provisions of this Bill and licences with regard to vessels, vehicles and moveable structures and also on trains.

Delegated powers

Choice of procedure

Regulations and orders under the powers described below are generally subject to negative resolution procedure in the Scottish Parliament. The Executive has chosen this procedure as the delegated powers we seek are required to prescribe procedural detail or other detail to supplement or up-date the provisions of the Bill. We do not believe affirmative resolution procedure will be necessary for this. However, in line with usual practice, affirmative resolution procedure has been chosen for orders under section 135 which textually amend primary legislation.

PART 2 LICENSING BODIES & OFFICERS

Section 6(7)(a) Statements of licensing policy

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 6(7)(a) confers on the Scottish Ministers the power to specify in an order the date before which every Licensing Board must publish their first ‘licensing policy statement’.

Reasons for taking this power

The purpose of the ‘licensing policy statement’ is to offer guidance and clarity on the policy upon which Licensing Boards are to base their decisions in carrying out their functions under the Bill. This is particularly important for a system in which, in order to allow for a high degree of local flexibility, Licensing Boards are given discretion. The proposed power would enable the Scottish Ministers to set the date when the first such policies should be in place. No firm date for the publication of the ‘licensing policy statement’ has currently been decided due to the need to discuss and consider in detail with Boards and the licensed trade the timescales during which the transitional period should take place.

Section 9(2) Licensing Board’s Duty to keep a public register

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 9(2) confers a power on the Scottish Ministers to make regulations specifying the form and manner in which the licensing registers are to be kept and specifying any additional information (not already outlined in the Bill) which Licensing Boards are to be required to enter into their licensing register.
**Reasons for taking this power**

All Licensing Boards are to be under a duty to keep a public register of licence decisions. The purpose of this power is to ensure that all Boards maintain a consistent approach across Scotland. This is important for a document which is open to inspection by the public. How this will be achieved will require further discussion with Boards and the level of detail required would make it a more suitable candidate for regulations.

**Section 13(4) Licensing Standards Officers**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 13(4) confers on the Scottish Ministers a power to make regulations prescribing the qualifications and experience required to be held by a Licensing Standards Officer.

**Reasons for taking this power**

The office of Licensing Standards Officer is a new one created by the Bill. Every local authority must appoint at least one such officer. To ensure a consistent minimum standard of competence across Scotland, Ministers would prescribe the qualifications and experience of such officers. This will be an extremely detailed piece of work which will require additional expert advice from the National Licensing Forum. A degree of flexibility to change the job description to enable the officers post to remain relevant with the market is also seen as desirable. All other terms and conditions would be a matter for the council to determine.

**PART 3 PREMISES LICENCES**

**Section 19(2)(b)(ii) Application for premises licence**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 19(2)(b)(ii) confers on the Scottish Ministers a power to prescribe by regulations the form which the layout plan of the licensed premises should take, which will accompany a licence application

**Reasons for taking this power**

The details are likely to be intricate and will require further consultation, so it is considered more appropriate for these to be set out in regulations.

**Section 19(4) Application for premises licence**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament
Section 19(4) confers a power on the Scottish Ministers to make regulations prescribing the form of operating plans and the information they would be required to contain in addition to that listed in subsection (4)(a)-(d). This includes information about the individual who is to be the premises manager, the activities to be carried on in the premises, the times alcohol is to be sold and whether the alcohol is for consumption on the premises, off the premises or both.

*Reasons for taking this power*

All applications for a premises licence must be accompanied by an operating plan. These plans will provide Licensing Boards and the general public with a clear indication of the activities to be undertaken on the premises. The operating plan approved by the Board forms part of the licence documentation. Ministers would take this power to prescribe the form and content of operating plans. As these will need to be detailed it is considered more appropriate for these to be set out in regulations. This should also ensure consistency across Scotland, a central element of the new system. Ministers also wish to ensure that the information provided in the operating plan demonstrates how the applicant proposes to comply with the 5 licensing objectives of the Bill. Prescribing the form of the operating plan will allow a simple standard pro forma to be developed. An Expert Reference Group on licensing was established by the Executive to further assist in the development of policy leading towards the drafting of the Bill and to provide expert advice. This is chaired by the Scottish Executive and has representatives from the Licensing Boards, the licensed trade, health, communities and the Police. One area the Group specifically considered was the content of operating plans and a separate paper will be submitted to the Committee on behalf of this Group.

Section 20(6) Notification of applications

- **Power conferred on:** The Scottish Ministers
- **Powers exercised by:** Regulations made by statutory instrument
- **Parliamentary procedure:** Negative resolution of the Scottish Parliament

The effect of section 20(6) is to confer on the Scottish Ministers a power to narrow or widen the category of persons having an interest in land neighbouring that in relation to which a premises licence application has been made. This category of person is entitled to receive notification of such an application. The power which is given to the Scottish Ministers is that of defining “neighbouring land” and “notifiable interest”. In this way, the Scottish Ministers will be able to set out what type of interest (eg ownership or tenancy) a person must have in the property before he or she is entitled to notification and how far from the licensed premises a property must be to qualify as “neighbouring”.

*Reasons for taking this power*

The Licensing (Scotland) Act 1976 requires notification of an application to neighbours situated in the same building as the premises applying for a licence. This proposed power would enable Ministers to prescribe in greater detail which persons are to be entitled to notification and enable this category to be changed as the regime develops. We are currently considering a range of 50 metres. We should point out that this power relates only to written
notification of a licence application and does not limit the general power for ‘any person’ to object or make representations.

Section 21(2)(a) Objections and representations

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 21(2)(a) confers a power on the Scottish Ministers to prescribe the manner and timescales within which Licensing Boards are to be required to forward to a premises licence applicant any objection or representation the Board has received relating to that applicant’s licence application.

Reasons for taking this power

It will be important that there is transparency about the procedures to be followed under the new system for the benefit of applicants and objectors. The power concerns the detailed procedure and it is therefore considered more appropriate for these procedures to be set out in regulations. As a general point, the removal of quarterly Board meetings has made it important for any procedural timescales to be clearly set, and that these should be consistent across Scotland.

Section 24(1)(a)(i), (1)(b) and (2)(f) Issue of licence and summary

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 24(1)(a)(i), (1)(b) and (2)(f) confer on the Scottish Ministers a power to prescribe the form of the premises licence and the summary of the premises licence and to prescribe any additional information to be included which is not covered in section 24(2)(a)-(e) of the Bill.

Reasons for taking this power

It is considered appropriate that the premises licence is a document which can be easily recognised across the country by Licensing Standards Officers, the police and consumers. A summary of the licence is to be displayed on the premises and that summary should be in a form which is instantly identifiable. The power concerns the detailed procedure and it is therefore considered more appropriate for these procedures to be set out in regulations.

Section 25(2) and (3) Conditions of premises licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 25(2) confers on the Scottish Ministers a power to modify both the content and the application of the mandatory conditions relating to premises licences set out in schedule 3.
Section 25(3) confers a power on the Scottish Ministers to prescribe further conditions which a Licensing Board may at their discretion impose when granting a licence.

Reasons for taking this power

Schedule 3 lists a set of mandatory conditions which premises licence holders must comply with. These conditions are intended to ensure a nationally consistent approach on those matters which are central to the delivery of the policy underlying the Bill (such as training and irresponsible drinks promotions).

The purpose of section 25(2) is to enable Ministers to add to this list and to extend the application of any condition specified in the schedule. This power would allow us in future to modify these conditions or to prescribe additional conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.

The Expert Reference Group on liquor licensing considered what mandatory and discretionary licence conditions should be imposed by the Scottish Ministers and we have endorsed the conclusions of the Group. Attached at Annex A are those mandatory conditions proposed by the Group (which we intend to implement) covering:

- Provision of adult entertainment on any licensed premises;
- Access by children to on-sale licensed premises.

As these conditions may be difficult to word and will require more thought and consultation before they are finalised it was preferable not to put them on the face of the Bill now.

In relation to the former, we consider in addition, that the use of private booths should be discontinued, whether or not they are lockable. We are also considering whether any additional licence conditions should be imposed.

In relation to the latter, we can confirm that this would relate to premises providing on-sales only. Compliance with the no-proof no-sale provisions set out in the Bill would be sufficient for off-sales.

We also wish to point out that the power to amend the schedule to modify the application of mandatory licence conditions would allow the Scottish Ministers, if this becomes desirable, to extend the application of the listed (or other) conditions on irresponsible promotions to off-sales. We intend to consider further how we might gather evidence relating to any links between binge drinking and its consequences and the purchase of alcohol from off-sales.

The purpose of section 25(3) is to enable Ministers to prescribe discretionary conditions which Boards may draw on as required within their locality. This allows Ministers to prescribe a ‘pool’ of conditions that Boards must have regard to. This power would allow us to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.
The use of a pool approach, especially when looking at the demands of a busy city centre premises compared to a rural premises was supported by the Expert Reference Group when considering suitable licence conditions for ‘late opening premises’ which supply on-sales. The draft conditions proposed are attached at Annex B. These have been endorsed by Ministers and we therefore intend to include these conditions in regulations using this power.

In addition Annex B sets out a proposed discretionary condition to be applied to off-sales. The Expert Reference Group, by a slim majority, considered that this condition ought to be mandatory but with an exemption for small premises. However, we believe it is simpler to make this a discretionary condition. We believe it would be extremely difficult to formulate a workable exemption from the condition which would successfully avoid penalising small shops.

As these conditions may be difficult to word and will require more thought and consultation before they are finalised it was preferable not to put them on the face of the Bill now.

**Section 27(6)(d) Application to vary premises licence**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 27(6)(d) confers on the Scottish Ministers a power to prescribe what may constitute a minor variation to a premises licence in addition to those already listed in section 27(6)(a)-(c).

*Reasons for taking this power*

Such a power would enable Ministers to add to the list of minor variations which are likely to change over time. The provision to adapt the definition of a ‘minor’ variation will allow the system to run with greater efficiency, since adding issues to this list as the system develops will avoid the need for unnecessary oral proceedings. The National Licensing Forum will be best placed to monitor Board views on this issue. The existing list of minor variations was agreed with the Expert Reference Group.

**Section 32(1) Transfer on application of person other than licence holder**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 32(1) confers a power on the Scottish Ministers to prescribe who may apply to the Licensing Board for the transfer of the licence under the circumstances set out in this section i.e. when the present holder of a premises licence being an individual:

- dies;
- becomes incapable;
- being a company, becomes insolvent or is dissolved;
- when the business is transferred (for example by sale) to another person.
**Reasons for taking this power**

Regulations are to set out the required nexus the applicant for a transfer (who, under this section, will be the proposed transferee) is to have with the premises licence holder to entitle him/her to make that application. So, for example, where the licence holder has died, it is envisaged that it will be an executor who makes the application and where a business has been sold it is likely to be the purchaser. As the details of possible permutations are likely to be intricate and complicated, it is considered most appropriate for these to be set out in regulations.

**Section 52(c) Certified copies**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament  

Section 52(c) confers on the Scottish Ministers a power to prescribe who may certify a copy of a premises licence to be a true copy in addition to those persons listed in section 52(a) and (b).

**Reasons for taking this power**

This would enable the list to be updated as and when necessary.

**PART 4 OCCASIONAL LICENCES**

**Section 53(7)(a) and (8)(h) Occasional licences**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament  

Section 53(7)(a) and (8)(h) confers a power on the Scottish Ministers to prescribe the form and content of occasional licences subject to section 53(8)(a)-(g).

**Reasons for taking this power**

It is appropriate that the occasional licence is a document which can be easily recognised across the country. Further discussions with Licensing Boards on what is required to ensure a workable procedure and agreed document have still to take place. When completed, the level of detail required will make it more appropriate to be set out in regulations.

**Section 55(2)(a) Objections and representations**

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament
Section 55(2)(a) confers on the Scottish Ministers a power to prescribe the manner and timescale within which Licensing Boards would be required to forward to an occasional licence applicant any objection or representation the Board has received in relation to that application.

Reasons for taking this power

It will be important that there is transparency about the procedures to be followed under the new system for the benefit of applicants and objectors. Further discussions with Licensing Boards on what is required to ensure a workable procedure have still to take place. When completed, the level of detail required will make it more appropriate to be set out in regulations. As a general point, the removal of quarterly Board meetings has made it important for any procedural timescales to be clearly set, and that these should be consistent across Scotland.

Section 57(2) and (3) Conditions of occasional licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 57(2) confers a power on the Scottish Ministers to modify both the content and the application of the mandatory conditions relating to occasional licences set out in schedule 4. Section 57(3) confers on the Scottish Ministers a power to prescribe further conditions which a Licensing Board may at their discretion impose when granting an occasional licence.

Reasons for taking this power

This Bill would, for the first time, introduce detail and procedure on occasional licences. At present these licences are dealt with on an ad-hoc basis. We believe in the interests of transparency and ease of administration, these simple procedures should be set out nationally (and this appears in the Bill).

Adopting the same approach as is taken to premises licence conditions, schedule 4 sets out a modified version of schedule 3. The modifications provide for alcohol to be sold by voluntary organisations, and exclude the conditions placed on premises licence holders regarding staff training and the payment of annual or recurring fees. However we see no reason not to apply our national policy on irresponsible promotions to the one-off events that will be covered by occasional licences.

As with premises licences, the power to modify schedule 4 in relation to mandatory conditions and to prescribe a pool of discretionary conditions, would allow us to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.
PART 6 PERSONAL LICENCES

Section 67(1) and (2)(e) Issue of licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 67(1) and (2)(e) confers a power on the Scottish Ministers to prescribe the form of a personal licence and the information it must contain in addition to that listed in section 67(2)(a)-(d).

Reasons for taking this power

The personal licence effectively provides a ‘qualification’ usable across Scotland. It is therefore important that the licence itself is, like a driving licence, instantly recognisable. The power concerns the detailed procedure and it is therefore considered more appropriate for these procedures to be set out in regulations.

Section 78(1) Licence holder’s duty to undertake training

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 78(1) confers on the Scottish Ministers a power to prescribe in regulations the appropriate training a personal licence holder would have to undertake to renew their personal licence, including different requirements in relation to different descriptions of the personal licence and the qualifications of the trainer. It also confers on Scottish Ministers a power to prescribe the form which the licence holder would present to the Licensing Board when renewing his or her licence.

Reasons for taking this power

Refresher training every 5 years was a recommendation of the Daniels Committee which Ministers endorsed and which will ensure skills are kept current. This will be an extremely detailed piece of work which will require additional expert advice from the National Licensing Forum. The power to prescribe training will ensure that training undertaken is to an assured standard applicable across all Licensing Boards in Scotland.

Section 80(7) Licensing Board’s duty to update licence

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 80(7) confers power on the Scottish Ministers to prescribe by regulations the level of detail of the refresher training which should be endorsed on the personal licence.
Reasons for taking this power

This will be an extremely detailed piece of work which will require additional expert advice from the National Licensing Forum. It will ensure the same approach is followed across Scotland again adding to the ease of use and recognition of the licence.

Section 81(1) Power to specify which Licensing Board is to exercise functions under this Part

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 81(1) confers on the Scottish Ministers the power by order to re-determine which Licensing Board should carry out the functions of Part 6 of the Bill concerning personal licences.

Reasons for taking this power

If a national database of information about personal licences is established in the future, that may allow more flexibility in the arrangements as to which Board should deal with issues relating to any particular personal licence. The power accordingly allows changes in those arrangements to be made.

Section 82(1) and (2) Power to prescribe licensing qualifications

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 82(1) and (2) confer a power on the Scottish Ministers to specify in regulations, “licensing qualifications” for the purposes of this Bill.

Reasons for taking this power

This power allows the Scottish Ministers to specify a minimum standard of training for all personal licence holders in Scotland. It also enables Ministers to keep the required training current. Training is a key element of the new system and it is important that personal licence holders, particularly premises managers, are trained to a standard which will enhance the licensed trade in Scotland in terms of service provision and will ensure those staff have the necessary skills to deal with difficult situations on licensed premises and have a full knowledge of the law. The National Licensing Forum will be asked for advice on appropriate training. Section 82(2)(c) and (d) effectively allows specialisation e.g. in on-sales or off-sales, subject to the advice of the forum, if this is considered appropriate.
Section 91 Regulations as to closure orders

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 91 confers on the Scottish Ministers a power to make further provision through regulations as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders. In particular:

- the form and manner of an application or notice to close; and
- the holding of hearings by Licensing Boards before making or extending closure orders.

Reasons for taking this power

It is considered appropriate for the procedure, which it is expected will be very detailed, to be contained in regulations. Such detailed regulations will contribute to a consistency of approach across Scotland.

PART 8 OFFENCES

Section 93(4)(c) Sale of alcohol to a child or young person

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 93(4)(c) confers on the Scottish Ministers a power by regulation to list what documents, in addition to those listed in section 93(4)(a) and (b), would be acceptable in establishing a child or young person’s age with regard to the purchase of alcohol.

Reasons for taking this power

There is already a plethora of different schemes and a continuing problem of fake ID and such a power would ensure that those who sell alcohol have a measure of reassurance of what is acceptable proof. However, this policy is considered likely to be too detailed for the Bill if, for example, we have to list out the types of cards that are acceptable.

Section 101(3) Duty to display notice

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 101(3) confers a power on the Scottish Ministers to prescribe by regulation the form and dimensions of a mandatory notice to be displayed in all licensed premises which will contain the statement set out in section 101(3) with regard to the offences connected to the sale of alcohol to those under 18.
Reasons for taking this power

Since we wish to prescribe the pro forma for the notice, this is considered more appropriate for regulations than for the Bill. However, the content of the notice is specified in the Bill. It will be important that consumers recognise that such notices are required by law and therefore that each premises is required by law to display the same notice.

PART 9 MISCELLANEOUS AND GENERAL

Section 115(3)(b) Excluded Premises

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 115(3)(b) extends the power of the Scottish Ministers under section 8 of the Roads (Scotland) Act 1984 to prescribe further classes of traffic for the purposes of that Act. When making such an order, the Scottish Ministers have the power to adapt the references in section 115(2)(a) to include the additional class.

Reasons for taking this power

Section 115(2)(a) effectively prevents licences from being granted in respect of motorway service stations. Motorways are identified as such by reference to prescribed classes of traffic which use them (“class 1” traffic as specified in Schedule 3 to the Roads (Scotland) Act 1984). The definition reflects that and this power ensures that any modifications to the classification of traffic which may affect the definition for the purposes of this Bill can be taken into account.

Section 115(5) Excluded premises

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 115(5) confers on the Scottish Ministers a power to amend, by order, the category of excluded premises.

Reasons for taking this power

Certain groups of premises such as Motorway Service Stations are regarded as unsuitable for the sale of alcohol. This power would allow Ministers to add other types of premises to the list of those excluded as the need arose.

Section 116(1)(a) and (b) Exempt premises

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament
Section 116(1)(a) and (b) confers a power on the Scottish Ministers to make an order listing which airports, ports or hover ports are exempt from the requirement to hold a licence under the Bill. Only the “examination station” or “approved wharf” at the airport, port or hoverport would be exempt. These are the areas beyond the security controls.

Reasons for taking this power

Under section 116(2) such an order would only be made if the airport or port appeared to have a substantial amount of international passenger traffic. Ministers have a power under the Licensing (Scotland) Act 1976 to exclude ports and airports from the statutory hours in order that they may provide refreshments to those travelling. This section updates and extends the present power. If a port or airport is not listed in such an order it would be required to obtain a licence in the normal way. This power would enable the exemption to be granted or withdrawn in line with the levels of international traffic experienced by ports and airports over time.

Section 117(1) and (4) Special provisions for certain clubs

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 117(1) and (4) confers on the Scottish Ministers the power to prescribe in regulations special provisions for certain clubs. These would exempt such clubs from certain provisions in the Bill and may prescribe the descriptions of clubs by reference to requirements such as the constitution of the club, membership and the rules of the club.

Reasons for taking this power

At present certain members clubs are registered under Part VII of the Licensing (Scotland) 1976 Acts by virtue of a certificate granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903 to enable non profit making clubs to provide a bar supplying alcohol to their members. Section 117 enables such clubs to keep their present special status while bringing them into the licensing system. Examples of such clubs range from veterans associations and sports clubs to student unions. In order to come within the definition of such a club, we would intend that the following requirements (which have been discussed with the representatives of the present registered clubs) would need to be met:

- the club must be non-profit making and not open to the public;
- the club must have a written constitution and rules;
- the business and affairs of the club must be under the management of a committee or governing body which is elected by the general body of members (and this must be reflected in the constitution and rules);
- the rules must state that no person under 18 shall be admitted a member of the club unless the club is one which is devoted primarily to some athletic or sporting purpose or is a students’ union;
- the rules must state that no member of the committee or governing body and no manager or servant employed in the club shall have any interest in the sale of alcohol;
- the rules must state that a visitor may not be admitted to the club except on the invitation and in the company of a member of the club and that where a visitor is
supplied with alcohol the member must enter his own name and the name and address of the visitor in a book which shall be kept for that purpose and which shall show the date of each visit;

- the rules must state that correct accounts and books shall be kept showing the financial affairs of the club;
- the rules must state that, in order for the club to be properly constituted, it must have at least 25 members.

It is intended that those meeting such requirements would be excluded from the overprovision assessment carried out by the Licensing Board.

In addition, we intend to prescribe a further category of members club that may be exempted from the requirement to have a premises manager who is a personal licence holder. This exemption would be applied only to very small clubs for whom the financial burden of employing a personal licence holder would be too great. While some discussions have already been held with clubs, it has not been possible to conclude what further refinement may be required, in particular the position with regards to smaller clubs. Taking this power would enable further consultation on this issue and present a degree of flexibility to update the conditions for this diverse group in the future. We intend to consult clubs further on a suitable level for this exemption which could, for example, be based on bar turnover.

**Section 120(1) Relevant offences and foreign offences**

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 120(1) confers a power on the Scottish Ministers through regulations to prescribe what would be a “relevant offence” for the purposes of the Bill.

*Reasons for taking this power*

It is considered that setting out the offences in regulations rather than on the face of the Bill is both neater and will provide the flexibility required to respond to any change in what types of offence are considered relevant in the context of alcohol licensing.

**Section 123(8) Appeals: supplementary provision**

Power conferred on: The Court of Session
Powers exercised by: Act of Sederunt
Parliamentary procedure: None

Section 123(8) confers a power to make by Act of Sederunt further provision as to the procedure to be followed in appeals against Licensing Boards’ decisions.

*Reasons for taking this power*
It is considered appropriate to allow the courts to regulate their own procedure by Act of Sederunt.

Section 124(2) and (3)(a) Hearings

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 124(2) confers a power on the Scottish Ministers to make regulations that set out the procedure to be followed by Licensing Boards in relation to a hearing held under the provisions of this Bill, including those matters set out in section 124(3). In particular section 124(3)(a) confers on the Scottish Ministers the power to prescribe in regulations who should be given notice of the hearing.

Reasons for taking this power

It is considered preferable for this level of detail to be contained in secondary rather than primary legislation. National procedures will ensure a greater understanding, particularly amongst those in the licensed trade who frequently deal with several different Licensing Boards, of their requirements in relation to preparing for a hearing. We believe it is particularly important for all Boards to notify the same range of people about a hearing and within the same timescale.

Section 125(1) Form etc. of application and notices

Power conferred on: The Scottish Ministers  
Powers exercised by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 125(1) confers on the Scottish Ministers a power to make regulations that set out the form, content, requirement to publicise or notice to be given of any application or notices made under the Bill.

Reasons for taking this power

It will be neater for this level of procedural detail, including the pro formas to be used, to appear in regulations. This will also allow us to consult further with interested parties to ensure that the forms are easy to understand and complete.

This power will, amongst other things, allow us to prescribe the detail of how applications should be advertised. It is our intention that applications should be well publicised e.g. to local residents and anyone with an interest. This will be done, as at present, by newspaper advertisements, until Licensing Board websites have been established. Once websites have been established there will be no further need for newspaper adverts, which are seen by Boards themselves as being expensive and ineffective. In addition, however, it is our intention that an A3 pro-forma notice would be displayed by the applicant outside the premises in question. The form of the notice would take into account advice from the National Licensing Forum. We would expect it to contain the following information:
• Licence applicant’s name;
• Name and address of premises;
• Proposed hours of operation on each day of the week;
• Brief overview of the nature of business to be conducted at the premises (drawn from draft operating plan);
• Specific arrangements for children;
• Information about how to make an objection or representation.

Section 127(1) Fees

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 127(1) confers on the Scottish Ministers the power to make regulations setting out what fees are to be applied under the provisions of this Bill.

Reasons for taking this power

The Licensing (Scotland) Act 1976 requires licence holders to apply for their licences every three years and to apply every year for a regular extension to their hours. The proposed new licensing regime is based upon an open-ended premises licence which would not require renewal. With such a change and the policy for the regime to be self financing, Ministers require the power to set out a fee structure that will finance the system without making costs untenable. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. In addition, secondary legislation provides the flexibility to change fee levels and fee structures regularly.

Section 130(3) Remote sales of alcohol

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 130 effectively requires that, where a sale of alcohol has been made remotely ie by telephone or internet and the place of despatch (warehouse) is in Scotland, then a premises licence is required for that warehouse. Section 130(3) confers power on the Scottish Ministers to make such provision as they consider appropriate to cover the case where alcohol is sold remotely and despatched from outwith Scotland but delivered to a place within Scotland.

Reasons for taking this power

We are concerned that, at present, sales made eg over the internet, from overseas companies are exempt from licensing regulation. This is a new and developing market and Ministers wish to take this power to ensure that this sector can be regulated appropriately in the future should the need arise.

Section 135 Ancillary provision
Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Affirmative/negative resolution of the Scottish Parliament

Section 135 confers on Scottish Ministers the power to make incidental, supplemental, consequential, transitional, transitory or savings provisions as they consider necessary or expedient. Such orders are subject to affirmative resolution where they make textual amendments to any Act, and negative resolution in any other case.

Reasons for taking this power
This provision allows suitable flexibility to deal with any minor problems that may arise.

Section 140(2) Short title and commencement

Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: None

Section 140(2) provides for the Scottish Ministers by order to appoint a day when the provisions of the Bill shall come into force and that different days may be appointed for different purposes.

Reasons for taking this power
This order making power is required to ensure effective commencement of the Bill.

SCHEDULE 1  LICENSING BOARDS

Schedule 1, paragraph 11(1) Training of members

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 1, paragraph 11(1) confers the power on the Scottish Ministers to specify in regulations the training that must be undertaken by members of the Licensing Board and the qualifications to be held by those who provide the training.

Reasons for taking this power
It is considered that the accreditation of training is too detailed to be contained on the face of the Bill. We also wish to consult further on the subject of training and, in particular, will seek advice from the National Licensing Forum.
We intend to set out mandatory requirements for Board member training. This can take the form either of specifying the minimum content of that training or accrediting particular courses and adding to this over time. This has to be done on a national basis.
Schedule 1, paragraph 12(4) Proceedings

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 1, paragraph 12(4) confers on the Scottish Ministers the power to make regulations that would set out provisions relating to the proceedings of Licensing Boards including:

- the times by which an application or other business must be considered;
- the publicising of meetings of a Board; and
- public access to any agenda and record of and other information concerning a meeting of a Board.

Reasons for taking this power

It is considered preferable for this level of detail to be contained in secondary rather than primary legislation. This will also allow changes to be made over time to reflect more modern practices which may ultimately reduce administration.

With the removal of fixed quarterly Board meetings, it is necessary to ensure the efficient progress of business by prescribing timescales within which different proceedings must take place. We have also taken powers to prescribe particularly those aspects of Board procedure which have the most impact on members of the public e.g. publicising meetings and public access to records. The public is entitled to expect the same standard across the country.

Schedule 1, paragraph 12(5) Proceedings

Power conferred on: Licensing Board
Powers exercised by: Rules
Parliamentary procedure: None

Subject to the provisions in schedule 1, paragraph 12(4), Licensing Boards may provide their own rules for the arrangements of meetings and proceedings. Rules made by the Licensing Boards must be published.

Reasons for taking this power

This would allow each Licensing Board to conduct its business in a manner best suited to them within the provisions prescribed.

SCHEDULE 3 PREMISES LICENCES: MANDATORY CONDITIONS

Schedule 3, paragraph 6(1) Training of staff

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 3, paragraph 6(1) confers a power on the Scottish Ministers to make regulations prescribing the appropriate training to be undertaken by staff who sell alcohol from a licensed premises and when such training should be renewed. It also enables Scottish Ministers to proscribe the qualifications to be held by those providing the training.

Reasons for taking this power

It is considered that the accreditation of training is too detailed to be contained on the face of the Bill. We also wish to consult further on the subject of training and, in particular, will seek advice from the National Licensing Forum.

We intend to set out mandatory requirements for the training of all permanent members of staff serving alcohol on licensed premises. This can take the form either of specifying the minimum content of that training or accrediting particular courses and adding to this over time. This has to be done on a national basis.

We intend to provide different requirements for casual staff and for staff working in seaman’s canteens, who are largely volunteers. This is expected to be in-house basic instruction given by the designated personal licence holder. We intend to provide that ‘casual staff’ would be considered to be those staff working in the trade in any post for a total of 4 months or less ie the 4 month period is cumulative.

Accreditation of training, including the suitable range and content of such training, will be considered further in conjunction with the National Licensing Forum.

Schedule 3, paragraph 8(4) Irresponsible drinks promotions

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 3, paragraph 8(4) confers on the Scottish Ministers the power to modify or add to the list of drinks promotions set out in paragraph 8(3).

Reasons for taking this power

See explanation under section 25(2) and 25(3) - conditions of premises licence.

SCHEDULE 4 OCCASIONAL LICENCES: MANDATORY CONDITIONS

Schedule 4, paragraph 7(4) Irresponsible drinks promotions

Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Schedule 4, paragraph 7(4) confers a power on the Scottish Ministers to modify or add to the list of drinks promotions with regard to an occasional licence set out in paragraph 7(3).

Reasons for taking this power

See explanation under section 57(2) and (3) - conditions of occasional licence

CONSULTATION

It is our intention to ensure adequate time for consultation on all regulations to be made under this Bill. It will be important to consult Licensing Boards and the licensed trade before licence conditions are finalised. Licensing Boards will also have a key interest in ensuring procedures are workable. Some issues, particularly training and the job description for the LSO, will require advice by the National Licensing Forum and liaison with bodies such as Alcohol Focus Scotland. We intend to continue to work closely with all interested parties on the detailed elements of the new system.
ANNEX A
LICENSING (SCOTLAND) BILL
DRAFT MANDATORY LICENCE CONDITIONS

ADULT ENTERTAINMENT

Entry Age Limit: over 18

External Doors: doors should be closed except to allow entry to customers. Performances should not be visible from outside the premises

Touching: there shall be no physical contact between performers and patrons before, during or after performances subject to some exemptions which require further work eg exchange of payment for the dance and a handshake at the beginning and/or end of a performance.

CCTV: CCTV shall be installed and maintained in good working order to the satisfaction of the Board and in consultation with the (local) Police. CCTV should be provided in public areas and also in some ‘private areas’ such as booths and corridors. It would be for the Board to specify the number of cameras.

Signage: promotional and advertising material may be distributed provided the content has been approved by the Licensing Board. Signs outside the club agreed with the Board may be displayed as long as the content is not of a suggestive nature and women or men are fully clothed. A price list should be displayed inside the club. The rules of behaviour by staff and customers within the club should also be made available.

Health and Welfare of Dancers: changing facilities and showers should be provided for the dancers.

Trained Door Stewards: trained door stewards should be provided.

Adult entertainment should be given only by performers and patrons may not participate.

Private Booths: where booths are provided they should not have locks or be capable of being locked and they should be covered by CCTV.

There was no agreement on the following proposed condition which may require further discussion:
Minimum Entrance Fee: there must be a minimum entrance fee and the level of that fee may be set by local Boards. The fee must not be attached to any drinks promotions.

CHILDREN AND YOUNG PERSONS

Changing Facilities: where children under 5 are to be admitted baby changing facilities accessible to both sexes should be provided. Provision of such facilities in unisex disabled toilets would also be acceptable.

Signage: Each premises is to visibly display a sign at the entrance (minimum A4 size) stating either:
• No children allowed; or
• Children welcome.

This should be supplemented with a note of the relevant hours during which children are allowed access, whether young persons (16 and 17 year olds) may enter accompanied or unaccompanied and a statement reminding accompanying adults of their responsibilities in the general control and welfare of their children.
ANNEX B
LICENSING (SCOTLAND) BILL
DRAFT DISCRETIONARY LICENCE CONDITIONS

LATE OPENING PREMISES

It was agreed that late opening premises would be defined as any licensed premises opening later than 12 midnight. The Board would have discretion to choose to apply any appropriate conditions from a pool of standard conditions.

- **Noise**: steps should be in place to ensure that there is no noise leakage from the premises.

- **CCTV**: A minimum of one CCTV camera covering the entrance to the premises shall be installed and maintained in good working order, to the satisfaction of the Board and in consultation with the (local) Police.

- **First Aid**: someone with first aid training should be on the premises at all times after 12 midnight.

- **Minimum Entrance Fee**: a minimum entrance fee should be charged.

- **Door stewards**: trained door stewards should be provided.

- **Radio link and Pubwatch Schemes**: where a local scheme based on a radio link to the Police or Pubwatch or a scheme with similar principles exists, the licensee must be a member.

- **Disposal of glassware**: disposal of glassware should be made at a reasonable time to be agreed by the Board. There should be secure bins provided for the disposal of glass.

- **Glass**: “non-glass receptacles” (eg plastic) required to be used throughout trading hours.

- **Toilet supervisors**: toilet supervisors should be provided.

- **Drugs policy**: a drugs policy should be implemented.

- **Curfews**: a curfew may be imposed on entrance (i.e. by a time agreed by the Board).

OFF-SALES

**Display areas**: the provision of separate display areas for alcohol for those premises where that would be appropriate.