Local Government and Transport Committee

7th Report, 2005 (Session 2)

Draft Stage 1 Report on the Licensing (Scotland) Bill

Volume 1
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Jacqueline Conlan, Bill Team Leader, Licensing (Scotland) Bill, Scottish Executive;
Ian Fairweather, Bill Team, Licensing (Scotland) Bill, Scottish Executive;
John St Clair, Office of the Solicitor, Scottish Executive;
Sheriff Principal Gordon Nicholson, QC, Chair of the Nicholson Committee on the Review of Liquor Licensing Law in Scotland;
Peter Daniels, Chairman of the Working Group on Off-sales in the Community;
Superintendent George Clelland, Strathclyde Police, Member of the Working Group on Off-sales in the Community; and
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David Poley, Director of Compliance and Good Practice, Portman Group;
Ian McAlpine, Coal Industry Social Welfare Organisation, Committee of Registered Clubs Associations;
Melanie Ward, President, National Union of Students (Scotland); and
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Councillor Rory Colville, Vice-Chair, Lorn Mid-Arrogyll, Kintyre and Islay Divisional Licensing Board;
Councillor Daniel Kelly, Chair, Bute, Cowal and Lomond Divisional Licensing Board;
Councillor Phillip Attridge, Chairman, City of Edinburgh Licensing Board;
Robert Millar, Clerk, City of Edinburgh Licensing Board
Dan Russell, Clerk to the Licensing Board, South Ayrshire Council, SOLAR;
Fiona Stewart, Depute Clerk, Aberdeenshire North Licensing sub-division, SOLAR; and
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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

REMIT AND MEMBERSHIP

Remit:

To consider and report on matters relating to local government (including local government finance), cities and community planning and such other matters (excluding finance other than local government finance) which fall within the responsibility of the Minister for Finance and Public Services; and matters relating to transport which fall within the responsibility of the Minister for Transport.

Membership:

Bristow Muldoon (Convener)
Bruce Crawford (Deputy Convener)
Fergus Ewing
Dr Sylvia Jackson
Paul Martin
Mr Michael McMahon
David Mundell
Tommy Sheridan
Margaret Smith

Committee Clerking Team:

Clerk To The Committee
Eugene Windsor

Senior Assistant Clerk
Alastair Macfie

Assistant Clerk
Euan Donald
The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

General points

1. The Committee broadly welcomes the Bill and endorses its objectives. The Committee fully acknowledges that changes in society which have taken place since the last major review of licensing legislation mean that the current system is no longer entirely suitable for today’s needs.

2. The Committee also accepts that the social cost to Scotland of alcohol abuse in terms of ill-health, crime, public disorder and anti-social behaviour is unacceptable and needs to be tackled comprehensively through a broad range of methods and approaches. In this respect, the Committee welcomes the measures in the Bill which will play a part in addressing these issues. The Committee notes however that, in itself, legislation cannot solve social problems. Whilst the provisions of this Bill have a role to play, there are wider social, economic and political issues surrounding Scotland’s drinking culture, which can only be addressed by concerted and ‘joined-up’ action by a range of agencies, including the Scottish Executive.

3. It is also recognised by the Committee that the system is in need of simplification and modernisation, and that changes need to seek to balance a number of interests. However, the Committee expresses disappointment that the enabling nature of the Bill inevitably means that much of the detail of its key provisions will be revealed at a later date in the form of guidance or regulations. Whilst the Committee recognises that this can be appropriate, there is a balance to be struck between what is ‘on the face of the Bill’ and capable of being scrutinised by the Parliament, and what is contained in guidance. The Committee accepts that whilst there are practical difficulties in developing guidance at the same time as the Bill itself, the Executive could perhaps have done more to have at least some draft guidance available during Stage 1.
4. In relation to the wider issue of alcohol related problems in Scotland the Committee welcomes the other work which is being carried out to reduce the negative impact of alcohol through the Scottish Executive’s Plan for Action on Alcohol Problems.¹

Licensing boards

5. The Committee believes local knowledge and expertise is essential in taking local licensing decisions, and considers that this lies most clearly with elected local councillors. The Committee also recognises that there is a need for a degree of consistency in decision making across the country, and as such welcomes plans for central guidance to be issued by the Scottish Ministers. The Committee is not, however, persuaded by the Scottish Licensed Trade Association’s (SLTA) arguments for a high degree of central control. The Committee therefore commends the approach taken in the Bill, which should combine a high degree of flexibility in the operation of licensing boards with a degree of consistency, where appropriate, in respect of national licensing conditions.

6. The Committee understands the policy intention from the Scottish Executive to create leaner, more efficient and more accessible licensing boards. However, the Committee considers that this needs to be balanced against the benefits of extensive local knowledge, much of which could be lost through the proposed reduction in the size of the membership of boards.

Size, composition and quorum

7. The Committee notes that City of Glasgow Licensing Board and City of Edinburgh Licensing Board both called for an increase in the maximum size of boards, and that this was supported by Sheriff Principal Nicholson. The Committee does not recommend a specific number of members at this stage, but welcomes the commitment from the Deputy Minister to reconsider this issue, and will look forward to considering any amendment he may wish to bring forward at Stage 2.

8. The Committee also asks the Scottish Executive to reconsider the quorum of licensing boards. All the evidence that the Committee received was in favour of increasing the number of board members required for a quorum. The Committee makes no specific recommendation as to what the quorum should be but asks the Scottish Executive to consider the evidence the Committee has received and re-visit the issue.

9. The Committee welcomes the proposal to retain the power to establish licensing divisions, within the current Bill. The Committee notes the continued support for the use of divisions by licensing boards in rural and sparsely populated areas. The Committee also notes the opposition to licensing divisions from both the licensed trade and City of Glasgow Licensing Board.

¹ Plan for Action on Alcohol Problems Scottish Executive, 2002
10. The Committee acknowledges that there are arguments both for and against divisionalisation, but accepts the Executive’s position that it should be for each board to determine its own arrangements in this respect.

Licensing Standards Officers (LSOs)

11. The Committee considers that LSOs could play an important role in the licensing process, but has concerns about the precise nature of that role. The Policy Memorandum notes that the National Licensing Forum will develop a job description for the LSOs. The Committee is concerned, however, that there will continue to be a lack of clarity over the role of the LSO until it is defined by the National Licensing Forum. The Committee therefore asks the Executive to provide more detailed information on the proposed role of LSOs two weeks before the start of Stage 2.

12. The Committee also considers that more detail is required in respect of the specific functions to be carried out by LSOs and the powers that they will be able to exercise in carrying out these functions. For example, what status will a report of an LSO carry?

13. The Committee also notes that there appears to be a lack of clarity over the accountability and reporting arrangements for LSOs. [...] The Policy Memorandum notes that the LSOs would be accountable to the local authority yet, in oral evidence, the Deputy Minister indicated that LSOs would be ‘answerable’ to licensing boards. The Committee assumes that the intention is that the LSO would work closely with the relevant licensing board clerk, but would be an employee of the local authority, with the staffing structure, including chains of accountability, being a matter for that authority to determine. However, the Committee asks the Executive to clarify this two weeks before the start of Stage 2.

14. The Committee supports what it understands to be the Bill’s proposal that LSOs be independent from licensing boards. The Committee accepts that LSOs would be able to act independently from their employing authority in analogous ways to environmental health or planning enforcement officers.

15. The Committee acknowledges concerns raised about the independence and funding of LSOs. The Committee understands that the level of licence fees has not yet been set by Ministers, but is concerned that the set-up costs, the salary and on-costs of employing LSOs may be difficult to incorporate within a self-funding budgetary framework for licensing. The Committee notes the suggestion that the salary of LSOs will be in the range of £15,000 - £30,000 but considers that this may be unrealistically low as the posts will require to be graded appropriately in comparison to other local government posts and will also attract on-costs. The Committee therefore calls on the Executive to carry out more detailed modelling on the costs of LSOs and what impact they can expect to have on fees.

16. The Committee welcomes the Deputy Minister’s commitment to listen to the concerns of local authorities about the funding of LSOs. The Committee
notes the arguments from the local government perspective that the Scottish Executive should fully fund the employment of LSOs. The Committee accepts however that the proposed LSOs should not be seen as simply an added tier of bureaucracy, and that it will be for each council to determine the most appropriate staffing structure, with reference not only to LSOs but to environmental health officers, building control officers and other relevant regulatory staff. The Committee also notes that a review of local government funding is currently taking place. For these reasons, the Committee is reluctant to recommend that the costs of the proposed LSOs be fully funded by the Executive as local government has argued. Nevertheless, the Committee looks forward to hearing the Deputy Minister’s proposals for funding the LSOs in due course.

17. The Committee is also concerned that any self financing budgetary framework for funding LSOs will inevitably have an impact on the running costs of businesses in the licensed trade. The Committee therefore believes that the Executive, in consultation with local government and the licensed trade, should examine closely how best to ensure that any additional financial burdens on the licensed trade are kept to a minimum.

Role of the Police

18. The Committee notes the concerns raised by police organisations and others over the role of the police in the licensing regime proposed under the Bill. The Committee is concerned that by reducing the police’s role in the licensing process to that of informing the licensing board of relevant convictions, the licensing board’s decision making process may be made poorer. Indeed the Committee considers that rather than any reduction in the police input some consideration should be given to requiring police reports on applications as a matter of course, prior to any determination by a licensing board, in a standardised format to ensure a consistent approach. However the Committee welcomes the Deputy Minister’s commitment to discuss the role of the police in the licensing process further with the Association of Chief Police Officers in Scotland (ACPOS).

19. The Committee is also concerned about the loss of the Chief Constable’s role as an objector. The Committee notes that the police will still have the right to object to an application in the same way that anyone else can object, but the Committee recommends that the Deputy Minister consider placing the right of the Chief Constable as a statutory objector on the face of the Bill, as was the case in the 1976 Act.

20. The Committee notes ACPOS’ concerns about the lack of a national database of personal licence holders. The Committee is concerned that without a national database, it might be possible for licence holders to be convicted of offences in one board area, and subsequently apply for a licence in another board area, without disclosing their previous convictions. The Committee accepts that a national database would be extremely beneficial and would encourage its introduction. The Committee was advised by the Deputy Minister that establishing such a database could be costly and might pose a range of other difficulties, but no details of these
costs and difficulties were provided. The Committee therefore asks that the Deputy Minister makes explicit the details of the consideration of costs and other difficulties as they are currently understood, and reports, two weeks ahead of the start of Stage 2, on the feasibility of establishing a national database of personal licence holders.

21. Finally, the Committee draws the Deputy Minister's attention to ACPOS’ concerns about the proposed powers to be given to LSOs to enter unlicensed premises without warrant. The Committee recommends that the Deputy Minister reflects on this and considers again whether this power is appropriate, particularly in view of the potential for LSOs to face violence when in pursuit of criminally trafficked alcohol.

National Licensing Forum

22. The Committee welcomes the proposed establishment of the National Licensing Forum. The Committee recognises that such a body is vital in providing the Scottish Executive with the detailed knowledge required to develop the guidance and regulations which will be required to support the new licensing system.

23. The Committee notes that decisions on the composition and precise role of the National Licensing Forum have yet to be taken, and that it is intended to review the Forum after two years of operation. Nevertheless, the Committee would welcome further information about its role and composition. The Committee does, however, welcome the commitment made by the Deputy Minister to keep the Committee informed of progress on the Forum over the summer period.

24. On receipt of the progress report from the Deputy Minister on the role and composition of the National Licensing Forum, the Committee will consider, at that time, whether it wishes to take further evidence from the Minister.

Local licensing forums

25. The Committee welcomes the establishment of statutory local licensing forums. The Committee also welcomes the proposal that boards will be required to explain to the local forum why they have not followed its advice as being likely to mean that the forum will have a significant and important role within the licensing process.

26. The Committee does, however, have concerns about how representative local licensing forums would be if they were established in the form proposed in the Bill. The Committee is not persuaded that a membership of 10 on a local licensing forum is sufficient to represent as fully as possible the interests of the local community and therefore welcomes the Deputy Minister's commitment to re-examine the question of numbers.
27. The Committee was not, however, persuaded by the evidence of City of Glasgow Licensing Board and South Ayrshire Council regarding the relationship between licensing boards and forums. The Committee supports the conclusions reached by the Daniels Committee, which recommended the separation of the forums from the licensing boards.

Licences: general points

Single premises licence

28. The Committee notes that a key aim of the new licensing system is to simplify the previously complex system of seven licence types. The Committee is not convinced that introducing three types of premises licence would assist in this objective. The Committee considers that introducing types of licences might encourage the continuation of differential opening hours between each type and might promote artificial distinctions between licensed premises.

29. The SLTA has said that providing for three types of premises licence might help ‘prevent some of the misrepresentations that exist at present where pubs become nightclubs and vice-versa’\(^2\). The Committee considers that attempting to ‘prevent’ such trends in the hospitality industry is unrealistic and counterproductive. The Committee is satisfied that the use of an operating plan which clearly sets out the activities to be carried out on a premises is an appropriate mechanism for licensing boards to judge whether or not to approve a licence. In the view of the Committee there is no need for multiple types of premises licence.

Excluded premises: garages and petrol stations

30. The Committee is not clear how the Executive proposes to meet the commitment made in the Policy Memorandum that community stores / petrol stations in rural areas would not be ‘adversely affected’ by the proposals in the Bill. Whilst the Committee accepts the need to send out a clear signal that drink driving is unacceptable, the Committee is concerned that the Bill as drafted might have a serious impact on the provision of local services in rural areas where a garage doubles as the only local shop. The Committee believes that there may be a case for amending the Bill to remove such garages from the list of ‘excluded premises’. The Committee is encouraged that the Deputy Minister appears willing to revisit this issue, and recommends that he provides a response to the Committee two weeks in advance of the commencement of Stage 2.

Vessels, vehicles and moveable structures

31. The Committee welcomes the Deputy Minister’s commitment to work with the ferry operators to resolve the problems which they have identified. The Committee draws to the Deputy Minister’s attention the submissions it has received. The Committee recommends that the Deputy Minister considers whether amendments to the Bill are required at Stage 2 to address the ferry companies’ concerns, including, for example, the need to identify appropriate certification for vessels when applying for a premises licence.

\(^2\) Written submission
Vehicles hired for entertainment purposes
32. The Committee is concerned that a lack of a reference to vehicles hired for entertainment purposes might represent an omission in the Bill, and recommends that the Executive should investigate whether such vehicles will in fact be licensed. The Committee requests a response on this point two weeks in advance of the commencement of Stage 2 of the Bill. If there is any doubt as to whether this particular type of vehicle will be covered by the provisions in the Bill, the Committee recommends that the Bill is amended at Stage 2 to include them within the new licensing regime.

Appeals
33. The Committee considers that it is regrettable that an appeals process for personal licence holders was omitted from the Bill as introduced. The Committee notes the commitment of the Executive to return to this issue at Stage 2. The Committee expects to be kept informed of the Executive's thinking in relation to the issue of appeals as it develops, and will consider carefully any amendments brought forward by the Deputy Minister.

Occasional licences
34. The Committee considers that it would not be appropriate for detailed training to be given to representatives of voluntary organisations who sell alcohol at events held using occasional licences. However, the Committee considers that there may be scope for a basic form of training to be given to representatives of voluntary organisations so that they are aware of their responsibilities in selling alcohol. The Committee would not want this training requirement to be onerous – it could, for example, take the form of a package of information which all applicants for occasional licences are required to read and understand. But the Committee considers that even a basic level of instruction and training would be beneficial and would address some of the concerns which were highlighted in evidence at Stage 1. The Committee recommends that this issue should be considered further by the National Licensing Forum.

35. In relation to the potential extra workload created by the proposed new arrangements for occasional licences, the Committee considers that it is too early to say whether or not the number of applications would increase significantly, or whether or not this would create any significant problems for licensing boards. Regardless of the impact, the Committee does not think the extra workload would represent an insurmountable problem or that a desire to avoid an increased workload is a good justification for maintaining the status quo.

Investment in areas surrounding licensed premises
36. The Committee therefore calls on the Executive to consider whether there are practical ways in which licensees may be required to contribute to increased policing and cleansing costs and to invest in outside infrastructure improvements like CCTV.
Licences: Administrative arrangements

Open ended licences

37. The Committee notes the concerns expressed by some witnesses about the proposed end to the three year renewal process. The Committee notes that the Deputy Minister’s position is that the new licensing regime will allow stronger community involvement in the licensing process via the local licensing forums, and that complaints about anti-social behaviour associated with a licensed premises could be made known quickly via the Licensing Standards Officers. The Committee notes, however, that it is difficult to assess how effective the new arrangements will be in addressing local concerns about licensed premises, and therefore recommends that the new National Licensing Forum reviews and monitors this aspect of the new licensing regime. The Committee further recommends that Ministers should ask the National Licensing Forum to co-ordinate a public information campaign designed to inform the public about their rights under the new licensing system and the procedures by which the public can highlight concerns about licensed premises.

Objections

38. The Committee welcomes the proposal to allow anyone the right to object to a licence application. The Committee believes that the advantages of opening up the licensing process to all outweigh any possible administrative burden created by increased numbers of objections. In relation to this possible burden, the Committee seriously doubts whether there will be large number of objections to licence applications received from individuals residing in areas outwith the licensing board area in which a particular premises was situated. Even if such objections were received, the Committee considers that the licensing board could readily put in place administrative arrangements to deal with them. The Committee recommends that Ministers should ask the National Licensing Forum to provide best practice guidance to licensing boards in relation to the procedures for dealing with objections, to help boards ensure that genuine and relevant objections are given proper attention.

Appeal rights for objectors

39. The Committee is concerned at the proposal that objectors to applications for premises licences will not be given the right to appeal against a decision taken by a licensing board. The Committee considers that such an appeal provision is important to allow a statutory review process for failed objections that could address issues that may adversely affect the local community. The Committee recommends that, in bringing forward amendments at Stage 2, the Executive should reconsider its position and introduce an appeals process for all persons who object to applications for premises licences, provided that their initial objection has not been deemed to be frivolous or vexatious by the licensing board.
Local authorities holding licences: questions in relation to the European Convention on Human Rights (ECHR)

40. The Committee notes the reassurance by the Executive that the provision in the Bill which would allow local authorities to hold licences is ECHR compatible.

Fees regime

41. The Committee notes that details of the fees regime will be prescribed by Ministers in regulations, following the completion of the fees review. It is therefore difficult for the Committee to make detailed comments on how the new fees regime might operate in practice in advance of the regulations being published.

42. The Committee wishes, however, to highlight a number of points raised in evidence, which the Executive should take into account in developing the new fees regime. First, the Committee considers that the fees regime should allow flexibility so that licensing boards can take account of local circumstances when setting fees, within an overall framework set by the Executive.

43. Second, the Committee considers that there should not be a flat licence fee rate: fees should take account of different types and sizes of licensed premises. In the view of the Committee, a new variable fees regime should be flexible enough to take account of the many different types of licensed premises. If, for example, fees were only set according to the rateable value of a premises, organisations such as museums, with a high rateable value but containing only a very small licensed bar, might be unduly penalised.

44. Third, the Committee has heard concerns from business groups about the potential burden of increased licence fees, and the Executive should have regard to these representations in developing the new fees arrangements and, in particular, the impact of any one-off ‘start up’ costs associated with the new arrangements.

45. The Committee expects the Executive to keep it fully informed about progress of the development of the new fees regime and also asks the Executive to provide draft proposals for the new fee regime in advance of their publication and/or their laying before the Parliament. The Committee will consider, on receipt of these draft proposals, whether it will wish to consider taking further evidence from the Minister.

Opening hours

Ending of ‘permitted hours’

46. In light of the fact that the majority of licensed premises now have regular extensions to their opening hours, the Committee is of the view that the concept of ‘permitted hours’ is increasingly not relevant in a modern licensing system. The Committee does not accept the view of the SLTA that it is undesirable for opening hours to be decided by a licensing board. On the contrary, the Committee considers that a licensing board is the right forum for such decisions to be taken. The Committee considers that the Bill
will allow licensing boards the opportunity to consider what opening hours are appropriate for each individual licensed premises and it is possible that particular premises that are the focus for anti-social behaviour could have their opening hours restricted. The SLTA has also complained that an end to permitted hours will lead to ‘an unacceptable range of inconsistencies’. The Committee disagrees and believes that an approach to licensing which removes inflexible opening hours and replaces them with variations in hours according to local circumstances, with the National Licensing Forum providing an overall policy framework, is to be welcomed.

Occasional extensions

47. The Committee is concerned that requiring an applicant for a licensed premises to set out every detail of its proposed opening hours in the operating plan could be unduly restrictive. There may be occasions, such as catering for a wedding or a funeral, when it will not be possible to know well in advance that ‘unusual’ opening hours will be required. This appears to be an omission in the Bill as drafted, which was identified by a number of witnesses.

48. The Deputy Minister did not give a detailed response to this evidence, but the Committee is encouraged by the fact that he seemed willing to look at this issue again. The Committee recommends that the Executive brings forward amendments at Stage 2 of the Bill to provide for a system of occasional extensions in certain tightly-defined circumstances, such as when an extension is required at short notice. However, the Committee would not want a provision for occasional extensions to be abused. The operating plan is the correct mechanism for setting out the opening hours of a licensed premises, and the Committee considers that any system of occasional extensions introduced at Stage 2 should not compromise this basic principle.

Presumption against 24 hour drinking

49. The Committee notes the presumption against 24 hour drinking which is contained in the Bill. The Committee considers that this provision in the Bill will have an impact in tackling the problems associated with drinking only if it is used in conjunction with other measures in the Bill such as banning irresponsible drinks promotions and the use of Licensing Standards Officers.

50. The Committee gave some thought as to whether a cut-off point of 24 hours was appropriate. Inevitably, any time limit selected will be somewhat arbitrary in nature. However, in relation to the 24 hour limit, the Committee had concerns that allowing licensed premises to advertise ‘24 hour drinking’, even in exceptional circumstances, might send out a signal that drinking for very long periods of time is an acceptable reason for visiting a particular licensed premises. The Committee also noted that the provision in the Bill could have the consequence that certain licensed premises may never close – or close only for very short periods.

51. As an alternative, the Committee was attracted by the suggestion made by Sheriff Principal Nicholson that 18 hours might be a more appropriate
cut-off point. The Committee is not yet convinced that 24 hour drinking is required in Scotland, even in exceptional circumstances, and requests further evidence from the Executive ahead of Stage 2 of the Bill on why this cut-off point was selected, rather than the 18 hours highlighted by Sheriff Principal Nicholson. As things stand, the Committee considers that 18 hours is a more appropriate cut-off point than the 24 hour limit set out in the Bill.

Premises operational issues

Children
52. The Committee notes the comments from Sheriff Principal Gordon Nicholson and others in relation to the lack of a policy on the face of the Bill relating to the access of licensed premises by children. If the Executive has a clear position that an opt-in approach to the access of children is desirable, the Committee would question why this clear principle has not been included in the Bill. In relation to the relative advantages of an opt-in versus an opt-out approach, the Committee is persuaded that many licensed premises in Scotland are not suitable for children and so an ‘opting-out’ approach to access by children would not be appropriate.

53. However, the Committee does accept that establishing a ‘family friendly’ atmosphere in some pubs and certain other licensed premises is a desirable objective and could help change Scotland’s drinking culture. The Committee recommends that the Executive should consider whether it can do more to encourage licensed premises, where appropriate, to become more ‘family friendly’ with appropriate facilities for children and families. The Committee considers that encouraging such a culture change should be a role for the National Licensing Forum, who could produce national guidelines for licensed premises seeking to adopt a ‘family friendly’ policy. The Committee also considers that Ministers should ask the National Licensing Forum to review the progress being made by licensed premises towards implementing such policies 5 years after the enactment of the Bill and consider what further action might be required.

Use of reasonable force
54. The Committee notes the Executive’s reassurance in respect of the use of reasonable force. The Committee considers that the proposed training regime for personal licence holders could provide an opportunity for sharing good practice on handling disorderly behaviour and removing people from licensed premises. The Committee therefore recommends that these issues are addressed in the training regime for personal licence holders (and, where used, stewards) when it is introduced in due course.

55. The Committee also asks the Executive to consider whether the arrangements in respect of regulation and training of door supervisors in England and Wales could be adapted in order to provide for an introduction of a similar scheme for Scotland to coincide with the commencement of the Licensing (Scotland) Act 2005.
Training

56. The Committee has addressed the issue of training for occasional licence holders above. In relation to training for holders of premises licences, the Committee notes that much of the detail of the proposed training standards will be set out via regulations. The Committee recommends, however, that the proposed training standards are sufficiently flexible to differentiate between types of employee in licensed premises, so that all staff receive training appropriate to their role and responsibilities.

Transitional arrangements and grandfather rights

57. The Committee is encouraged by commitments made by the Deputy Minister and his officials to work with the trade and consult further on the question of transitional arrangements. The Committee believes that the Executive must attempt to balance the requirement for the industry to have a reasonable period in which to become familiar with the new regime, with the need not to have the licensing boards operating two systems for any longer than is necessary. The Committee considers that a transitional period of up to twelve months could be seen as a reasonable period but does not wish to be prescriptive about this because it is hopeful that a consensus can emerge from the discussions with the trade and the working group of licensing board clerks which has recently been set up.

58. On the question of grandfather rights, the Committee accepts that there should be no automatic transfer of licences to the new system, and that in order to avoid a two-tier licensing system, it will be necessary for a re-appraisal of all existing licences to ensure compliance with the requirements of the new system.

59. The Committee accepts that there will be ‘traditional’ licensed premises and listed or historic buildings which may be difficult to adapt to modern standards and may require considerable investment in order for such adaptations to be carried out. However, the Committee does not agree with sections of the licensed trade that such premises should simply be allowed to carry on regardless. Facilities like disabled access, separate toilets for men and women and baby changing facilities (where appropriate) do not seem unreasonable demands in the twenty first century. The Committee therefore calls on the Executive to engage the industry in more detailed discussions about the transition to the new regime in respect of those businesses which are likely to experience particular difficulties in adapting their premises, with an understanding that all licensed premises will have to comply with current building standards. The Committee also calls on the Executive to consider granting an interim licence, for up to three years, to allow the required investment to be secured, plans to be drawn up and alterations or improvements to be carried out, with the understanding that all premises would have to meet current standards if their operators wished to continue trading there at the end of the interim period.
Overprovision

60. The Committee had concerns over whether numbers of licences would be used as a crude measure of overprovision, perhaps with the result that, for example, an application for a licence for a restaurant could be refused, on the basis that there was a general overprovision of licences within a locality. The Committee therefore welcomes the clarification from the Executive that the Bill provides that licensing boards shall consider overprovision in general or ‘licensed premises of a particular description.’

61. The Committee rejects the position of the Scottish Licensed Trade Association, for a moratorium which, whether intentionally or not, has undertones of a wish to protect the market share of its existing members and prevent legitimate competition. The Committee also considers it is not in the interests of Scotland’s tourism and hospitality industry to allow no future growth in on-sales licensed premises.

62. However, on the question of the overprovision elements of the Bill, the Committee, on balance, accepts that they are necessary and appropriate, although it has a number of reservations about the practicalities for licensing boards in proactively assessing overprovision. The Committee recognises that there is a role for communities to have some input into the assessment of overprovision, as provided for by the Bill. However, the Committee would wish this to be balanced with a need to safeguard the existence of a vibrant retail sector, and in particular the viability of small grocery shops and foodstores which might not achieve sufficient turnover to ensure the survival of the business were they not be granted a licence.

63. The Committee concludes therefore that the guidance to be issued by the Scottish Ministers, following advice from the proposed National Licensing Forum, will be crucial. The Committee also considers that the guidance must also be informed by input from the regulatory bodies regarding the practicalities of the process, especially if there is to be no representation on behalf of those authorities on the National Forum. It is understood that the guidance will be subject to consultation in draft form before facing Parliamentary scrutiny under the affirmative resolution procedure. The Committee is likely to take evidence on the Executive’s proposals in respect of overprovision before the SSI comes before it in due course.

Irresponsible drinks promotions

Differential pricing policy

64. The Committee concludes that the proposed differential pricing policy is an appropriate measure which should help to reduce the incidence of binge drinking in on-sales premises. However, the Committee notes that some organisations which gave evidence during Stage 1 suggested a longer period of price list maintenance of up to 72 hours, whilst others have suggested that prices should be maintained for a set number of hours of

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3 David Davidson reserved his position in relation to the differential pricing policy.
opening rather than a fixed period. The Committee therefore asks the Executive to provide further information on why it chose 48 hours for the price maintenance requirement, and what evidence it considered in arriving at the decision.

Promotions in the off-sales trade

65. The Committee notes representations which have been made on this issue from both the on and off-sales trade and from other organisations with an interest.

66. The Committee shares the concerns that, at present, the Bill does little to address aspects of binge-drinking and other anti-social behaviour in which the alcohol involved may have been purchased from an off-licence or other off-sales outlet through the use of an irresponsible drinks promotion.

67. However, the Committee accepts that there are differences between the on and off trades, and it is perhaps too simplistic to apply exactly the same measures to both sectors. The Committee also notes that sound evidence would be required in order to justify an intervention in the commercial market operation of the off-sales trade.

68. The Committee also notes that the Executive is awaiting the findings of a study currently being carried out by the Scottish Association of Alcohol Action Teams, before deciding whether to commission further research in this area.

69. Finally, the Committee notes that the Bill proposes powers which would enable ministers to extend the licence conditions from on-sales to off-sales should they decide that it is appropriate to do so, and that it is proposed that this is done through the affirmative procedure for subordinate legislation.

70. The Committee notes the position but feels that more could have been done to produce evidence in relation to off-sales in time to inform parliamentary scrutiny of the Bill. Nevertheless, the Committee sees no reason why some of the seven measures set out in schedule 3 of the Bill—for example those relating to drinks likely to appeal to under 18s and those based on the strength of the alcohol—could not, with appropriate adjustment, be extended to the off-sales trade in the meantime. The Committee would also ask the Minister to ensure that any future draft subordinate legislation is placed before the Committee in advance of it beginning its formal parliamentary process.

Delivery of alcohol

71. The Committee welcomes the proposal in the Bill to prevent alcohol being delivered between midnight and 6am, but is agreed that more may need to be done to ensure that adequate age checks are made by delivery workers. The Committee acknowledges that it may be difficult to find a workable solution to this problem but nevertheless calls on the Executive to consider, following discussions with the police, whether there are workable ways in which the Bill can be amended to ensure that under-age people are not able to use dial-a-drink services.
Advertising and labelling

72. The Committee notes that advertising and labelling of alcohol are reserved matters, but calls on the Executive to enter into discussions with their Westminster, and, if appropriate, European Commission colleagues, to determine whether it is necessary to seek any changes in relation to these matters across the whole of the UK.

73. The Committee commends the British Retail Consortium guidance and recommends that the Scottish Executive asks the National Licensing Forum to have regard to it in developing its future guidance to the off-sales sector.

Test purchasing of alcohol by persons under 18

74. The Committee notes the complex issues surrounding test purchasing and young people, but nevertheless is hopeful that the difficulties facing police in utilising test purchasing as one of the options in assembling evidence against retailers suspected of selling alcohol illegally to young people can be overcome. The Committee therefore looks forward to hearing the Lord Advocate’s views in due course.

Miscellaneous matters

Report of the Subordinate Legislation Committee

75. The Committee asks the Scottish Executive to consider the recommendations of the Subordinate Legislation Committee and where appropriate, bring forward amendments at Stage 2.

Financial Memorandum

76. The Committee notes the contents of the Financial Memorandum.

77. Although the new licensing system is intended by the Executive to be self-financing, it is difficult for the Committee to assess whether this will indeed be the case as many of the details provided in the Financial Memorandum appear to be rather sketchy. Details of the fees regime, for example, have not yet been developed, and the cost of the Licensing Standards Officers is very difficult to determine when all that is known is that between 32 and 66 will be required, at a salary of £15,000 - £30,000 (with no mention of on-costs). Whilst the Committee acknowledges that the Financial Memorandum is intended to be helpful, it considers that more robust financial details are required and as it stands the Committee is not able to determine whether the Financial Memorandum is adequate.

Overall conclusions

78. The Committee has found there to be broad consensus both across the political parties and the key stakeholders within the industry and local government on the need for modernisation of the system, and for the licensing objectives which underpin the Bill.

79. The report has highlighted a number of areas where the Committee feels that further consideration is needed, or where the Bill could be improved or extended. The Committee looks forward to hearing the Scottish
Executive’s proposals for further improvement of the Bill, if its general principles are agreed by the Parliament.

80. **Subject to the caveats above, the Committee recommends to the Parliament that the general principles of the Licensing (Scotland) Bill be approved.**

**INTRODUCTION**

81. The regulatory framework governing the sale of alcohol in Scotland has, except for some minor amendments, remained virtually unchanged since the passage of the Licensing (Scotland) Act 1976 (‘The 1976 Act’). The Act followed the recommendations of the Clayson Committee, a committee set up with a broad remit to review the existing licensing provisions. The broad aim of the Act was to create ‘a more liberal licensing system in the hope that this would encourage sensible social drinking, while at the same time building in a variety of controls in the interests of public health and public safety.’

82. Almost thirty years have elapsed since the changes in the licensing regime introduced by the 1976 Act yet in the intervening period society has witnessed a great many social, economic and political changes. Compared to the nineteen seventies, it is clear that across Scotland many more people are now economically active, disposable income is higher and leisure time is longer. Accompanying these social changes have been changes in the way people experience their leisure time and how alcohol is purchased and consumed. Unfortunately, Scotland and indeed the rest of the UK have also experienced growth in health and public order problems related to the purchase and consumption of alcohol. The Committee fully accepts therefore that the time is right for a review of the way in which alcohol is bought and consumed in Scotland.

83. This report to the Parliament sets out the Local Government and Transport Committee’s findings following its Stage 1 inquiry into the general principles of the Licensing (Scotland) Bill.

**Background to the Bill**

84. The starting point for the Bill can be traced back to the appointment, in June 2001, by the then Justice Minister of a Committee under the Chairmanship of Sheriff Principal Gordon Nicholson, with a remit—

> ‘To review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public order; to recommend changes in the public interest; and to report accordingly.’

85. The Nicholson Committee appointment itself followed the creation in 1999 of Scottish Advisory Committee on Alcohol Misuse (SACAM), with whom the Nicholson Committee retained close contact during the course of its work.

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4 The Nicholson Committee: Review of Liquor Licensing Law in Scotland
86. The Nicholson Committee reported in August 2003,\(^5\) making 90 specific recommendations. The Scottish Executive launched a consultation following the publication of the report, and established the Working Group on Off-Sales in the Community, under the chairmanship of Peter Daniels who had recently retired from the post of Chief Executive of East Renfrewshire Council. The Daniels Committee reported in February 2004,\(^6\) making a total of 30 recommendations.

87. In May 2004, the Executive established an Expert Reference Group and launched a further phase of written consultation\(^7\) on proposals contained in *The Licensing (Scotland) Bill: A Consultation on Liquor Licensing*, which set out proposals on the Nicholson Committee's key recommendations.

88. Following this second consultation, the Scottish Executive announced in September 2004 its intention to introduce a Licensing Bill, during the 2004/05 parliamentary year, ‘to bring Scotland's behaviour on alcohol and the use of alcohol into the 21st century.’\(^8\)

89. The Bill was introduced in the Parliament by Mr Tom McCabe, the Minister for Finance and Public Service Reform, on 28 February 2005.

**The Bill’s Policy Proposals**

90. The Policy Memorandum\(^9\) notes that the licensed trade is ‘a vital component of the Scottish economy’ with the drinks and hospitality sector in Scotland employing about 200,000 people.’ Scotland benefits, it notes, ‘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.’ However, the Policy Memorandum goes on to recognise that misuse of alcohol does occur, and that ‘this trend has been rising over a number of years and […] brings with it a substantial cost to society.’ This cost includes—

‘[…] 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.’

91. According to the Policy Memorandum, the cost of alcohol abuse 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.

92. The Policy Memorandum also highlights the effect of misuse of alcohol on communities, noting—

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\(^7\) *The Licensing (Scotland) Bill: A Consultation on Liquor Licensing*, Scottish Executive 2004 http://www.scotland.gov.uk/consultations/justice/lbcll-00.asp

\(^8\) *First Minister, Statement to the Parliament on the legislative programme, September 2004*

\(^9\) Policy Memorandum SP Bill 37 http://www.scottish.parliament.uk/business/bills/billsInProgress/licensing.htm
‘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.’

93. Against this backdrop the Executive therefore identifies in the Policy Memorandum four key issues that underline the approach taken in proposing the new licensing system. These are—

- reducing underage drinking
- reducing binge drinking
- providing a voice for communities; and
- modernisation

94. The Policy Memorandum goes on to note that, 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.

95. Finally, the Policy Memorandum sets out five high level licensing objectives on which it is proposed that the Scottish licensing system should be based. Those are—

- preventing crime and disorder;
- securing public safety;
- preventing public nuisance;
- protecting and improving public health; and
- protecting children from harm.

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10 Policy Memorandum, p7
96. In seeking to provide for a legislative framework which will ensure that these objectives are, as far as possible, achieved, the Executive seeks to modernise the system to give it the capacity to address some of the issues facing society today, including binge drinking and under age drinking, and to provide for communities to ‘have their voices heard’ and ‘participate’ constructively in the licensing process for their areas.

THE COMMITTEE’S INQUIRY

97. Following introduction of the Bill on 28 February 2005, the Local Government and Transport Committee was designated by the Parliament as lead committee under Rule 9.6.1 of Standing Orders. The Justice 2 Committee was designated as a secondary committee, and its report to the lead committee, along with that of the Subordinate Legislation Committee, is contained at Annexe A.

98. An adviser, Stewart Ferguson, Clerk to the Glasgow City Council Licensing Board, was appointed by the Committee to assist it in its consideration of the Bill at Stage 1.

99. The Committee considered the Bill at its meetings on 22 March, 12 April, 19 April, 26 April, 3 May and 17 May 2005. It took oral evidence from—

Rab Fleming, Head of Division, Local Governance and Licensing Division, Scottish Executive;

Jacqueline Conlan, Bill Team Leader, Licensing (Scotland) Bill, Scottish Executive;

Ian Fairweather, Bill Team, Licensing (Scotland) Bill, Scottish Executive;

John St Clair, Office of the Solicitor, Scottish Executive;

Sheriff Principal Gordon Nicholson, QC, Chair of the Nicholson Committee on the Review of Liquor Licensing Law in Scotland;

Peter Daniels, Chairman of the Working Group on Off-sales in the Community;

Superintendent George Clelland, Strathclyde Police, Member of the Working Group on Off-sales in the Community;

Tony Rednall, Secretariat, Working Group on Off-sales in the Community;

Paul Waterson, Chief Executive, Scottish Licensed Trade Association (SLTA);

Colin Wilkinson, Secretary, Scottish Licensed Trade Association (SLTA);

Kevin Swoffer, Head of Technical Services, British Retail Consortium;

David Poley, Director of Compliance and Good Practice, Portman Group;
Ian McAlpine, Coal Industry Social Welfare Organisation, Committee of Registered Clubs Associations;

Melanie Ward, President, National Union of Students (Scotland);

Keith Robson, Director, National Union of Students (Scotland);

Patrick Browne, Chief Executive, Scottish Beer and Pub Association;

Sue Allen, Vice President, Scottish Beer and Pub Association;

Councillor Duncan MacIntyre, Chair, Mid-Argyll, Kintyre and Islay Divisional Licensing Board;

Councillor Rory Colville, Vice-Chair, Mid-Argyll, Kintyre and Islay Divisional Licensing Board;

Councillor Daniel Kelly, Chair, Bute, Cowal and Lomond Divisional Licensing Board;

Councillor Phillip Attridge, Chairman, City of Edinburgh Licensing Board;

Robert Millar, Clerk, City of Edinburgh Licensing Board;

Dan Russell, Clerk to the Licensing Board, South Ayrshire Council, SOLAR;

Fiona Stewart, Depute Clerk, Aberdeenshire North Licensing sub-division, SOLAR;

Councillor Jim Swan, Chair of the Licensing Bill Team, COSLA;

Kathy Cameron, Policy Manager, COSLA;

Malcolm Dickson, Deputy Chief Constable, Lothian and Borders Police, Association of Chief Police Officers in Scotland;

Jack Law, Chief Executive, Alcohol Focus Scotland;

Mary Ellmers, National ServeWise Manager, Alcohol Focus Scotland;

Jane Hasler, Greater Glasgow Alcohol Action Team Co-ordinator;

Willie Caie, Project Manager, Safer City Centre Initiative;

Neil Ross, Former Chairman, Moray Council on Addiction;

Niall Stuart, Deputy Parliamentary Officer, FSB;

Hazel Watson, Professor of Nursing, Glasgow Caledonian University and Chair, Nursing Council on Alcohol;

Geoff Earl, Community Psychiatric Nurse, NHS Lothian and RCN Scotland Board Member for Lothians;
Dr Mac Armstrong, Chief Medical Officer for Scotland;
Professor Peter Donnelly, Deputy Chief Medical Officer for Scotland; and
Tavish Scott MSP, Deputy Minister for Finance and Public Service Reform.

100. The Committee also issued a general call for evidence and received written submissions from—

Anne Hill
Bar, Entertainment and Dance Association
Barnardo's
Belhaven
Biggart Baillie Solicitors
British Hospitality Association
Caledonian MacBrayne
CAMRA
City Centre Tenants and Residents Association Perth
Diageo
Doreen Edgar
Dundee City Licensing Board
George Allan
City of Glasgow Licensing Board
Heriot-Watt Students Association
Highland Council
Iain Sykes
Law Society of Scotland
Mitchells and Butlers Plc
Northlink Ferries
Perth & Kinross Licensing Board
Punch Taverns
Royal College of Nursing Scotland
Salvation Army
Scottish Association of Alcohol Action Teams
Scottish Association of Building Standards Managers
Scottish Golf Union
Scottish Grocers’ Federation
Scottish Intercolligate Group on Alcohol
South Ayrshire Licensing Board
The Scotch Whisky Association
West Lothian Drug and Alcohol Concern
West Lothian Licensing Board
Youth Link Scotland

101. The Committee is grateful to the many people and organisations who submitted written evidence.

102. The Committee was keen to collect information from a wider range of people and interests than those professionally involved, and through its adviser organised a committee event held in the City Chambers in Glasgow on Monday 11 April. This event was attended by a number of people who had recent experience of the licensing system together with representatives of community councils, Strathclyde Police and members of the Glasgow Licensing Board.

103. A web-forum was also established by the Committee to enable internet users to submit views to the inquiry.

THE COMMITTEE’S OVERVIEW OF THE BILL

104. The Committee broadly welcomes the Bill and endorses its objectives. The Committee fully acknowledges that changes in society which have taken place since the last major review of licensing legislation mean that the current system is no longer entirely suitable for today’s needs.

105. The Committee also accepts that the social cost to Scotland of alcohol abuse in terms of ill-health, crime, public disorder and anti-social behaviour is unacceptable and needs to be tackled comprehensively through a broad range of methods and approaches. In this respect, the Committee welcomes the measures in the Bill which will play a part in addressing these issues. The Committee notes however that, in itself, legislation cannot solve social problems. Whilst the provisions of this Bill have a role to play, there are wider social, economic and political issues surrounding Scotland’s drinking
culture, which can only be addressed by concerted and ‘joined-up’ action by a range of agencies, including the Scottish Executive.

106. It is also recognised by the Committee that the system is in need of simplification and modernisation, and that changes need to seek to balance a number of interests. However, the Committee expresses disappointment that the enabling nature of the Bill inevitably means that much of the detail of its key provisions will be revealed at a later date in the form of guidance or regulations. Whilst the Committee recognises that this can be appropriate, there is a balance to be struck between what is ‘on the face of the Bill’ and capable of being scrutinised by the Parliament, and what is contained in guidance. The Committee accepts that whilst there are practical difficulties in developing guidance at the same time as the Bill itself, the Executive could perhaps have done more to have at least some draft guidance available during Stage 1.

107. Some members of the Committee felt that, in view of Scotland’s poor health record and its relationship to abuse of alcohol, the Bill could have gone further in its objectives, by seeking to reduce the amount of alcohol consumed by the country as a whole. Whilst this view did not win broad support, the Committee does consider that the Bill needs to make stronger provisions in respect of irresponsible drinks promotions by the off-sale premises, which are widely acknowledged, albeit anecdotally, as being significant factors in relation to anti-social behaviour and disturbance in communities across the country. Much of the evidence received by the Committee argued that it was unfair for the Bill’s provisions in respect of irresponsible drinks promotions to be applicable only to the on-sales trade. The Committee acknowledges that this is a complex issue which does not appear necessarily to have straightforward solutions, but nevertheless considers that more needs to be done in this respect at this time. This issue is examined in more detail in the main body of the report.

108. On the other hand, the Committee believes that in scrutinising the general principles of this Bill, a number of factors need to be borne in mind.

109. Firstly, alcohol remains a legal product which is enjoyed in moderation and responsibly by the overwhelming majority of people in Scotland.

110. Secondly, as the report will note later, there is widely accepted medical evidence that there are health benefits from moderate consumption of alcohol, and in this respect it differs from other behaviours like, for example, tobacco smoking, which is widely agreed by experts to be harmful even at minimal levels of consumption.

111. Thirdly, the manufacture and distribution of alcoholic drinks, and the contribution of alcohol to the tourism and hospitality industries, are important factors in the continuing growth of the Scottish economy.

112. Finally, the Committee considers that it has to be acknowledged that Scotland is a northern European country which shares the characteristic of many other countries in the region of having a strong drinking culture. Whilst many will agree that serious efforts are required to reduce the adherence to the drinking
culture, the Committee feels that the contribution that this Bill will be able to make to that process needs to be kept in perspective. The Bill will not be able to address every alcohol related problem, nor does it seek to do so.

113. In this respect therefore the Committee welcomes the other work which is being carried out to reduce the negative impact of alcohol through the Scottish Executive’s Plan for Action on Alcohol Problems.\textsuperscript{11}

114. The following sections of the report will examine specific aspects of the Bill in more detail.

**ADMINISTRATION OF LICENSING SYSTEM**

115. This section of the report deals with the administration of the new licensing system as proposed in the Bill. It sets out the role and composition of the licensing board and summarises evidence received by the Committee in respect of their make up. This section also considers the proposed Licensing Standards Officers, local licensing forums, the National Licensing Forum and the role of the police within the proposed new licensing regime.

**Licensing Boards**

116. Licensing boards were first introduced by the Licensing (Scotland) Act 1976, replacing the previous licensing courts. The 1976 Act requires that there is at least one licensing board for each local authority area. Licensing boards are made up of local councillors and are responsible for the administration of liquor licensing in Scotland. The Bill retains licensing boards to carry out their current role, but places a new duty on them to publish a policy statement about their licensing functions every three years. The statement will be required to promote the five licensing objectives set out in the Bill.

117. The Bill seeks to offer licensing boards greater local flexibility in their operation to deal with local circumstances. The Bill does, however, contain provisions which are intended to maintain a degree of consistency across the country through guidance and regulations to be issued by Scottish Ministers on issues, for example, like licensing hours, the assessment of overprovision, the licensing objectives and the standard national licence conditions.

118. The Committee heard mixed evidence on the central control/local flexibility question. Representatives of local authorities generally favoured a greater degree of local flexibility, whilst those representing the licensed trade generally argued for higher degrees of national consistency.

119. The Scottish Licensed Trade Association (SLTA) argued—

‘There are 50-odd licensing boards in Scotland. We want the bill to be consistent and fair, but the 50-odd licensing boards have different interpretations of the current legislation. There are all sorts of differences and we cannot tell our members in any one part of the country what the policy is, because it changes all the time. If the Glasgow licensing board

\textsuperscript{11} Plan for Action on Alcohol Problems Scottish Executive, 2002
was split into different sub-boards, a pub on one side of a street could be allowed to open when a pub on the other side of the street was closed. It would breed inconsistency.\textsuperscript{12}

120. The SLTA also indicated that although it was not opposed to a degree of local flexibility for boards, it was in favour of strong and clear guidance from the centre, to ensure as much consistency as possible in the decisions taken by licensing boards.

121. The Committee believes local knowledge and expertise is essential in taking local licensing decisions, and considers that this lies most clearly with elected local councillors. The Committee also recognises that there is a need for a degree of consistency in decision making across the country, and as such welcomes plans for central guidance to be issued by the Scottish Ministers. The Committee is not, however, persuaded by the SLTA's arguments for a high degree of central control. The Committee therefore commends the approach taken in the Bill, which should combine a high degree of flexibility in the operation of licensing boards with a degree of consistency, where appropriate, in respect of national licensing conditions.

**Composition, size and quorum**

122. Under the 1976 Act the licensing board must consist of at least one quarter of the councillors representing the area for which the board is responsible. Schedule 1 sets out proposals to reduce the size of the boards' memberships. The Bill proposes that each licensing board would have a maximum of 10 members, with a minimum of 5 members and a quorum of 3 members.

123. The Bill Team Leader advised the Committee that the proposed reduction in the size of boards was in response to the recommendation of the Nicholson Committee. She told the Committee that—

‘A lot of feedback was given to the Nicholson committee about people feeling intimidated when they appear before large boards with up to 20 members. The Nicholson committee also felt that the large boards operate inefficiently, sometimes simply because people cannot hear what is going on or understand the process because of the line of councillors.’\textsuperscript{13}

124. Sheriff Principal Gordon Nicholson, chair of the Nicholson Committee, expanded on the reasoning behind the Nicholson Committee’s recommendation to reduce the size of licensing boards—

‘First, there is the size of a licensing board as relates to what one might call its broad committee function: the function of sitting in private in a room rather like this one and of deciding, as they will have increasingly to do under the new bill, on issues of policy on overprovision and whatever else. I would have no difficulty with a board of 15 or even more for that sort of thing, so that it can be as representative as possible of all interests.

\textsuperscript{12} OR Col 2266
\textsuperscript{13} OR Col 2191
The problem area is when boards emerge out of their private room and come into the chamber to hold a quasi-judicial hearing. There, applications are considered, objections are listened to and so on. It is in that sort of context where, we felt, the existing boards are too big. I hope that the committee will keep that distinction in mind in determining whether the figures in the bill are or are not appropriate.'

125. The Nicholson Committee recommended that in order to create more efficient and effective licensing boards, the maximum number of board members should be restricted to 5. However, the Bill Team Leader told the Committee that this number was considered too low by respondents to the Nicholson Committee report—

'People who commented on the Nicholson committee's proposals agreed that there should be a reduction in the number of members who sit on boards, but said that a reduction to five people was a step too far. Therefore, we reconsidered the matter and thought that a maximum of 10 councillors sitting at any one time—rather than Nicholson's maximum of five councillors—would be appropriate. That number would mean that there would be flexibility to allow for geographical combinations. Boards could have fewer members where that is appropriate, but larger areas such as Glasgow might want to have 10 people sitting. We think that that proposal is adequate to allow for geographical spread, interests to do with the sexes and so on.'

126. Members raised concerns about the size of board memberships with particular reference to the large cities. Sheriff Principal Gordon Nicholson was sympathetic to members’ concerns about small numbers of board members representing densely populated, large geographical areas and suggested that perhaps the Bill should be amended to allow for boards to have no fewer than 5 members and no more than 15 members.

127. Councillor Attridge of City of Edinburgh Licensing Board also favoured increasing the maximum number of board members—

'Ve need consistency. We need the breadth of knowledge of local members on the board. However, the proposal was for small boards with a maximum of 15 members and a minimal quorum. I know what local members are like, and I do not like the idea of big developments in somewhere the size of Scotland's capital city being run by a handful of people. We need to have a good breadth of knowledge from local people.'

128. City of Glasgow Licensing Board was also supportive of increasing both the maximum and minimum number of board members—

'[...] a quorum of 3 members is considered to be too few to provide an appropriate level of representation. The Board therefore maintains its view that 15 members with a quorum of 8 would be reasonable, failing which a
membership that is an appropriate percentage of the total number of Councillors for the city.\textsuperscript{17}

129. In evidence to the Justice 2 Committee, Councillor Macdiarmid, the Convener of City of Glasgow Licensing Board, went further and suggested that the Bill is overly prescriptive in terms of the size and quorum of licensing boards. He suggested to the Justice 2 Committee that the size and quorum of a board should not be determined on a one-size-fits-all basis.

130. Dundee City Licensing Board indicated support for licensing boards of 10, but suggested an alternative quorum—

'Whilst being supportive of the proposal to limit membership to a maximum of 10, the Board feel that the quorum should be 50% of the members eligible to sit, rather than a fixed figure of 3. This would reduce the possibility of the composition of the board completely changing from meeting to meeting for those boards which decide to have 9 or 10 members. If 3 is the figure, this may lead to inconsistency in decision-making and erode public confidence in the new system.'\textsuperscript{18}

131. Perth and Kinross Licensing Board also called for a bigger quorum. In its written submission to the Committee it proposed increasing the quorum from 3 to 5.

132. Members pursued the issue of quorum and board size with the Bill Team Leader. She indicated to the Committee that if licensing boards were to have memberships as low as 5, it would not be appropriate for them to operate with a quorum any greater than 3. She did, however, indicate that the Executive would give further consideration to this issue—

'From our perspective, it is not particularly intended that three people should take decisions for the whole of Glasgow, as Glasgow will have a 10-member board. However, you are right that to say that if only three people turned up, they could, technically, make decisions. Perhaps the matter should be considered in relation to larger boards and there could be consideration of whether quorums could be changed in accordance with the size of the board. That might be one option.'\textsuperscript{19}

133. In evidence to the Committee, the Deputy Minister assured the Committee that in light of the evidence received by the Committee he would give further consideration to the issue of the size of membership and quorum of licensing boards.

134. The Committee understands the policy intention from the Scottish Executive to create leaner, more efficient and more accessible licensing boards. However, the Committee considers that this needs to be balanced against the benefits of extensive local knowledge, much of which could be

\textsuperscript{17} City of Glasgow Licensing Board written submission
\textsuperscript{18} Dundee City Licensing Board written submission
\textsuperscript{19} OR Col 2193
lost through the proposed reduction in the size of the membership of boards.

135. The Committee notes that City of Glasgow Licensing Board and City of Edinburgh Licensing Board both called for an increase in the maximum size of boards, and that this was supported by Sheriff Principal Nicholson. The Committee does not recommend a specific number at this stage, but welcomes the commitment from the Deputy Minister to reconsider this issue, and will look forward to considering any amendment he may wish to bring forward at Stage 2.

136. The Committee also asks the Scottish Executive to reconsider the quorum of Licensing Boards. All the evidence that the Committee received was in favour of increasing the number of board members required for a quorum. The Committee makes no specific recommendation as to what the quorum should be but asks the Scottish Executive to consider the evidence the Committee has received and re-visit the issue.

137. Members also raised concerns about the size of areas that licensing boards were required to cover. The Policy Memorandum states that in circumstances where licensing boards cover large areas, boards may make the decision to divide their area into licensing divisions—

‘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.’

138. The Committee noted that some boards covering large and densely populated areas have so far chosen not to sub-divide into licensing divisions. Under the Bill as introduced, were a board to choose not to sub-divide its area, as few as three board members might make the licensing decisions.

139. Sheriff Principal Nicholson also elaborated on some of the issues surrounding the possible division of licensing boards in major cities into licensing divisions—

‘Although it already happens in places such as Aberdeenshire, in the past it was never thought of in relation to cities. I can see some advantage in divisionalisation. The committee would have to lobby Glasgow City Council and get it to accept the proposal, however. If Glasgow divisionalises and has four separate boards, perhaps there might not be so much wrong with 10 as the maximum number of members of local licensing forums. However, if Glasgow remains a single unitary licensing board area, an argument could be made that the maximum number of board members should be increased so as to allow a wider spread of local interests from around the whole city.’

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20 Policy Memorandum, page 11
21 OR Col 2233
140. Peter Daniels, Chair of the Working Group on Off-sales in the Community, noted—

‘[…] I see no problem with Glasgow establishing four licensing boards under the bill—or as many as were needed—each of which would have a membership of 10 councillors. If the issue is to ensure that the voice of the community, as expressed through local elected representatives, is sufficiently strong, that would be a way of achieving that. That model would mean that 40 councillors in Glasgow were members of a licensing board’

141. Councillor Rory Colville of Lorn, Mid-Argyll, Kintyre and Islay Divisional Licensing Board emphasised to the Committee the importance of licensing divisions within rural and island communities. He noted that within Argyll and Bute there were ‘great divergences in drinking culture’ and local knowledge was therefore very important.

142. On the other hand, Mitchell and Butlers plc argued in a written submission that devolving power to licensing divisions would lead to inconsistency in decisions—

‘The creation of too many “divisions” by Licensing Boards within their areas will make it more difficult to work with clearly defined Board policy and consistency will be lost in terms of licensing decisions, even within local authority areas. This would appear contrary to the intended aim of the licensing reform process to simplify the bureaucracy of the current system.’

143. City of Glasgow Licensing Board also opposed the idea of licensing divisions—

‘[…] the City of Glasgow Licensing Board does not consider that the introduction of Divisional Licensing Boards in the city would be appropriate. It is felt that increasing the number of Boards would make it much more difficult to maintain a consistent approach throughout the city, especially with regards to the implementation of policies, which could lead to conflicts between the different divisions and difficulties for the trade. It is essential that policies and local conditions are devised and implemented in a rational and coordinated way throughout the city which can only be achieved via the maintenance of a single Board. It is considered that there would also be great potential for the “politicisation” of smaller Divisional Boards whereby pressure from individuals or community groups could be brought to bear on the small number of local Board members serving in a Division to take certain views on applications. There would also be significant administrative difficulties in organising regular meetings of a number of Divisional Boards in the city and it is the Board’s understanding that in those areas of Scotland where Divisional Licensing

\[22\] OR Col 2261
\[23\] Mitchells and Butlers plc. written submission
Boards currently operate the costs of operating the Boards are considerably higher.\textsuperscript{24}

144. The considerations over the size of licensing boards and whether or not they should be divisionalised were put to the Deputy Minister when he appeared before the Committee at the end of the Stage 1 scrutiny process. He told the Committee that he was not in favour of compelling licensing boards to establish licensing divisions—

‘I am not going to tell local authorities what they should do; that would not be appropriate. I am naturally a decentraliser by political spirit, so I do not believe that my natural tendencies would be helped by my lecturing any board as to what it should do. If such a divisional structure is appropriate for Glasgow, that is a matter that the local authority in Glasgow will progress. I say only that I would not stand in the way of that. I genuinely believe that local authorities should make decisions based on the best structural fit for their city.’\textsuperscript{25}

145. The Committee welcomes the proposal to retain the power to establish licensing divisions, within the current Bill. The Committee notes the continued support for the use of divisions by licensing boards in rural and sparsely populated areas. The Committee also notes the opposition to licensing divisions from both the licensed trade and City of Glasgow Licensing Board.

146. The Committee acknowledges that there are arguments both for and against divisionalisation, but accepts the Executive’s position that it should be for each board to determine its own arrangements in this respect.

**Licensing Standards Officers (LSOs)**

**General**

147. Section 13 of the Bill proposes the appointment of Licensing Standards Officers (LSOs) to ensure that there is successful implementation and compliance with the new regime. The Policy Memorandum sets out the role of the proposed LSOs—

‘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.’\textsuperscript{26}

**Role and accountability**

148. The Policy Memorandum indicates that the proposed National Licensing Forum would develop a national job description for LSOs.

\textsuperscript{24} City of Glasgow Licensing Board written submission
\textsuperscript{25} OR Col 2562
\textsuperscript{26} Policy Memorandum, page 25
149. The Policy Memorandum notes that the LSOs would be employed by the local authorities. In oral evidence to the Committee, the Deputy Minister suggested that the LSOs would also be ‘answerable’ to the licensing board—

‘LSOs will be answerable to licensing boards. I envisage that, in practice, the clerk to the board and the LSO or, in particular localities, LSOs would have a close working relationship. That is how the system would work.’

150. In evidence to the Committee, the Bill Team Leader expanded on the proposed role of the LSO, and in particular the importance of his or her role as a mediator—

‘As for dealing with problems, the new system will produce a big improvement. The role of mediation for the licensing standards officer, who is a new officer, is in the bill. The primary purpose of that is to allow an officer to mediate between a community and a licensee when a problem exists. That will provide an opportunity to sort out matters locally first. If that does not work, the bill has a much wider range of sanctions, which run from written warnings and changes to terms of operation of premises to suspension and revocation of licences. The licensing standards officer will provide a route for more direct linkage with a community.’

151. The Deputy Minister told the Committee how important he thought the LSOs would be in the modernisation of the licensing system—

‘The importance of licensing standards officers will be one of the improvements to the system. We should not underplay that. If local Licensing Boards have the right people as standards officers, that will lead to tremendous improvements. We will spend a lot of time trying to ensure that that happens during the transition of the next couple of years.’

Independent of LSOs
152. A number of witnesses raised concerns about whether LSOs being local government employees might compromise their independence. The Law Society of Scotland, for example, questioned whether or not it would be better for LSOs to be centrally contracted by the Scottish Executive—

‘[…] LSOs should be centrally organised and based. This would allow resources to be applied where they are required and diverted from where they are not required. Such a roving team of LSOs would have the advantage of increasing the objectivity of officers and allow the team to rapidly build up experience.’

153. The Salvation Army also expressed concerns about the independence of the LSOs—
‘We agree with the proposed recruitment of Liquor Licensing Standards Officers (Pt 2:13) and applaud their independence from the licensing boards, but we would argue that they should also have a degree of independence from the local authority. As council employees they may experience conflicts of interest in the pursuance of their duties.’

154. Peter Daniels, Chair of the Working Group on Off-sales in the Community, did not consider that concerns about the independence of LSOs were justified. He cited the example of planning enforcement officers and environmental health officers, arguing that although they were employed by the local authority they were able to act in a professionally independent manner.

155. Councillor Attridge of City of Edinburgh Licensing Board echoed the views of Peter Daniels, seeing the role of the proposed LSOs as analogous to that of an environmental health officer—

‘We envisioned LSOs as being along the lines of environmental health officers and having many powers of entry. We accept that councils, not boards, will employ LSOs. LSOs should not be employed by the police. The police will still report to boards and we do not want to hear from two branches of the same department—I would like to hear a slightly different view.’

156. City of Glasgow Licensing Board considered, however, that LSOs should act on behalf of the boards—

‘It is the Board’s view that Licensing Boards should have a monitoring and enforcement capability and that the Licensing Standards Officer should assume that role. It is difficult to see how Licensing Standards Officers can actively implement Board policies and take ‘enforcement’ action of any description without the direction and sanction of the Board.’

Funding
157. The Policy Memorandum indicates that the LSOs will be part of the overall cost of the new licensing regime, which is intended to be self-financing. The Executive envisages between 32 and 66 LSOs across Scotland, earning a salary of £15,000 - £30,000.

158. The Committee heard concerns about the funding of LSOs. Peter Daniels, Chair of the Working Group on Off-Sales in the Community, was very much in favour of the Scottish Executive funding the LSOs and not the local authorities—

‘As you would probably expect from a former local authority chief executive, I have strong views about the financing of the LSOs. They will be a cost to local authorities. I would expect the Scottish Executive to assess that cost fully and to reimburse councils for the cost of employing an LSO. In the case of small councils such as Clackmannanshire, the cost could be fairly low. Even my council, East Renfrewshire, with 43 licensed premises, will have only one officer.

31 The Salvation Army, written submission
32 OR Col 2368
33 City of Glasgow Licensing Board, written submission
However, councils such as Glasgow and Edinburgh will have substantially more than one LSO. The cost could be quite heavy for local government. As a former council chief executive, I think that the Executive should pick up the bill.¹³⁴

159. Councillor Colville of Lorn, Mid-Argyll, Kintyre and Islay Divisional Licensing Board argued that within Argyll and Bute there will be a need for more than one LSO and securing funding for this could be problematic—

'We anticipate that we will need two LSOs—one for each division—because of the huge area that is involved. We have a pub on Sanda that takes a whole day to get to—it is designed purely for sailors. We have 26 inhabited islands, more than half of which certainly have some form of licensed premises, although I am not sure of the exact number. A big concern is how we will pay for the officers. I am sure that the committee has heard before from Argyll and Bute Council about the issue of sparsity—the population is spread throughout the area. Argyll and Bute Council cannot afford to subsidise the officers, so they will have to be funded either out of the fees or centrally.'¹³⁵

160. The Deputy Minister indicated that he was listening to the concerns of local authorities about the cost of LSOs—

'We have talked a little about the job of licensing standards officers and it is clear to me that the costs associated with that job must be considered from a local government perspective. For example, if an environmental health officer is doing a related task, we must consider whether posts can be amalgamated. We must consider efficient local government in that context—I have received strong representations from local government on the matter. We do not want to introduce another tier of bureaucracy, as some people envisage will happen, or to increase costs, if the justification for doing so is questionable. Much work is required, but I want to ensure that we work with the Convention of Scottish Local Authorities and local government so that when we make judgments about the fee-review recommendations, we do so in the overall context of the tasks that will be needed, which will be to do not just with licensing standards officers but EHOs and others […]'.¹³⁶

161. The Committee considers that LSOs could play an important role in the licensing process, but has concerns about the precise nature of that role. The Policy Memorandum notes that the National Licensing Forum will develop a job description for the LSOs. The Committee is concerned, however, that there will continue to be a lack of clarity over the role of the LSO until it is defined by the National Licensing Forum. The Committee therefore asks the Executive to provide more detailed information on the proposed role of LSOs two weeks before the start of Stage 2.

³⁴ OR Col 2250
³⁵ OR Col 2369
³⁶ OR Col 2606
162. The Committee also considers that more detail is required in respect of the specific functions to be carried out by LSOs and the powers that they will be able to exercise in carrying out these functions. For example, what status will a report of an LSO carry?

163. The Committee also notes that there appears to be a lack of clarity over the accountability and reporting arrangements for LSOs. As noted earlier in this section, the Policy Memorandum notes that the LSOs would be accountable to the local authority yet, in oral evidence, the Deputy Minister indicated that LSOs would be ‘answerable’ to licensing boards. The Committee assumes that the intention is that the LSO would work closely with the relevant licensing board clerk, but would be an employee of the local authority, with the staffing structure, including chains of accountability, being a matter for that authority to determine. However, the Committee asks the Executive to clarify this two weeks before the start of Stage 2.

164. The Committee supports what it understands to be the Bill's proposal that LSOs be independent from licensing boards. The Committee accepts that LSOs would be able to act independently from their employing authority in analogous ways to environmental health or planning enforcement officers.

165. The Committee acknowledges concerns raised about the independence and funding of LSOs. The Committee understands that the level of licence fees has not yet been set by Ministers, but is concerned that the set-up costs, the salary and on-costs of employing LSOs may be difficult to incorporate within a self-funding budgetary framework for licensing. The Committee notes the suggestion that the salary of LSOs will be in the range of £15,000 - £30,000 but considers that this may be unrealistically low as the posts will require to be graded appropriately in comparison to other local government posts and will also attract on-costs. The Committee therefore calls on the Executive to carry out more detailed modelling on the costs of LSOs and what impact they can expect to have on fees.

166. The Committee welcomes the Deputy Minister’s commitment to listen to the concerns of local authorities about the funding of LSOs. The Committee notes the arguments from the local government perspective that the Scottish Executive should fully fund the employment of LSOs. The Committee accepts however that the proposed LSOs should not be seen as simply an added tier of bureaucracy, and that it will be for each council to determine the most appropriate staffing structure, with reference not only to LSOs but to environmental health officers, building control officers and other relevant regulatory staff. The Committee also notes that a review of local government funding is currently taking place. For these reasons, the Committee is reluctant to recommend that the costs of the proposed LSOs be fully funded by the Executive as local government has argued. Nevertheless, the Committee looks forward to hearing the Deputy Minister's proposals for funding the LSOs in due course.
167. The Committee is also concerned that any self financing budgetary framework for funding LSOs will inevitably have an impact on the running costs of businesses in the licensed trade. The Committee therefore believes that the Executive, in consultation with local government and the licensed trade, should examine closely how best to ensure that any additional financial burdens on the licensed trade are kept to a minimum.

Police

168. The Committee heard evidence from a number of organisations about the impact of the Bill upon the police. In general the police appeared to support the intentions of the Bill, but some concerns were voiced both by the police and other organisations that police powers could be diminished under the Bill.

169. The Committee noted that the Bill proposes changes from the current system proposed in the Bill with regard to the reporting of offences by the police to the licensing board. The Bill Team Leader explained—

"In relation to new applications, the bill adopts the recommendation of the Nicholson committee, that the approach should be based on relevant offences or relevant convictions. Such an approach has been introduced in England and Wales. The police will provide information on new applications to the licensing board on the basis of convictions for relevant offences, which will be listed."\(^{37}\)

170. She went on to tell the Committee that she did not envisage this giving rise to any particular problems as it was anticipated that the list of offences would be fairly extensive.

171. Superintendent George Clelland, of Strathclyde Police, appearing alongside Peter Daniels as a member of the Working Group on Off-sales in the Community, outlined the current role of the police in the licensing process, before noting some concerns about the proposed role of the police under the Bill—

"We are notified of every application for a new licence and given the opportunity to make appropriate inquiries and make a full report on the application to the board. The other part of our involvement with the system is the on-going monitoring of licensed premises. Currently, we have the opportunity to bring before boards complaints and objections to renewals or regular extensions of licences, so we are currently very much part of the process. I have reservations about the provisions that relate to the chief constable's involvement. It would not be appropriate for our role simply to be to notify the licensing board of convictions "for a relevant offence or a foreign offence." A licensing board should be fully informed before it makes a decision on a premises licence and it might be appropriate to inform boards of other relevant information in relation to personal licences."\(^{38}\)

\(^{37}\) OR Col 2218

\(^{38}\) OR Col 2253
172. Deputy Chief Constable Malcolm Dickson of the Association of Chief Police Officers (ACPOS) in Scotland was also concerned about the Bill’s proposals in this regard—

‘The current legislation is not perfect, but it allows licensing boards to take account of matters that do not necessarily result in a conviction in a court of law. The civil standard of proof—on the balance of probability, rather than beyond all reasonable doubt—is required, as is the case in relation to the decisions of other bodies. There are matters to do with licensing, and particularly the people who are involved in the licensing trade, that police forces should legitimately bring to the attention of licensing boards. The bill removes that discretion from licensing boards.’

173. Paul Waterson of the Scottish Licensed Trade Association was supportive of the police calls for a bigger role in the licensing process—

‘The police should be able to object, too. We are firmly in favour of their being brought into the system.’

174. The Deputy Minister told the Committee that he would soon be meeting with ACPOS and that the matter of police objections to licence applications would be considered.

175. Deputy Chief Constable Malcolm Dickson of ACPOS also conveyed concerns to the Committee about the use of personal licences. He indicated to the Committee that without a national database of personal licences it would be difficult to monitor whether or not an applicant for a personal licence had convictions. Under the proposed new system, the onus is on the licence holder to report convictions when moving to a new licensing board area. Malcolm Dickson suggested that without a national database, personal licence holders could choose not to report convictions and avoid detection. He told the Committee—

‘As for personal licences, the Nicholson committee’s recommendation of a national database of personal licences would have been sensible. However, I understand that resources and the logistics involved may prevent the immediate implementation of that recommendation.’

176. Questioned on this issue by the Committee, the Deputy Minister said that—

‘[…] At times, another national database is an attractive idea, but I would need to be persuaded that that would be the most effective use of public resources. We will discuss the matter with ACPOS.’

177. The final concern about the Bill, as expressed by the police, related to the LSOs and their powers to enter unlicensed premises. In its written submission, ACPOS explained its opposition to proposals to give LSOs powers to enter unlicensed premises, without warrant, to search for alcohol—
This power of entry without the authority of a warrant would appear to be excessive. Also, while licensees will be familiar with LSOs and are likely to cooperate peacefully, criminals trafficking illegally in alcohol are unlikely to be compliant and may well offer violence. The inspection of unlicensed premises is an inappropriate activity for LSOs and this duty should really lie with the police, who are trained and equipped for such investigations. In any case, there appears to be no good reason why it should be possible to exercise such a power without the authority of a warrant.\textsuperscript{43}

178. The Committee notes the concerns raised by police organisations and others over the role of the police in the licensing regime proposed under the Bill. The Committee is concerned that by reducing the police's role in the licensing process to that of informing the licensing board of relevant convictions, the licensing board's decision making process may be made poorer. Indeed the Committee considers that rather than any reduction in the police input some consideration should be given to requiring police reports on applications as a matter of course, prior to any determination by a licensing board, in a standardised format to ensure a consistent approach. However the Committee welcomes the Deputy Minister's commitment to discuss the role of the police in the licensing process further with ACPOS.

179. The Committee is also concerned about the loss of the Chief Constable's role as an objector. The Committee notes that the police will still have the right to object to an application in the same way that anyone else can object, but the Committee recommends that the Deputy Minister consider placing the right of the Chief Constable as a statutory objector on the face of the Bill, as was the case in the 1976 Act.

180. The Committee notes ACPOS' concerns about the lack of a national database of personal licence holders. The Committee is concerned that without a national database, it might be possible for licence holders to be convicted of offences in one board area, and subsequently apply for a licence in another board area, without disclosing their previous convictions. The Committee accepts that a national database would be extremely beneficial and would encourage its introduction. The Committee was advised by the Deputy Minister that establishing such a database could be costly and might pose a range of other difficulties, but no details of these costs and difficulties were provided. The Committee therefore asks that the Deputy Minister makes explicit the details of the consideration of costs and other difficulties as they are currently understood, and reports, two weeks ahead of the start of Stage 2, on the feasibility of establishing a national database of personal licence holders.

181. Finally, the Committee draws the Deputy Minister's attention to ACPOS' concerns about the proposed powers to be given to LSOs to enter unlicensed premises without warrant. The Committee recommends that the Deputy Minister reflects on this and considers again whether this power is

\textsuperscript{43} Association of Chief Police Officers in Scotland, written submission
appropriate, particularly in view of the potential for LSOs to face violence when in pursuit of criminally trafficked alcohol.

National Licensing Forum

182. The Scottish Executive proposes that a National Licensing Forum be established by Scottish Ministers in order to provide expert advice to Ministers on the detailed issues surrounding the implementation of the new licensing regime. It is understood that 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. The Committee heard that the forum would, amongst other things, consider the role of the LSOs, overprovision and the rights of objectors.

183. Some concerns were expressed by witnesses that the National Licensing Forum could have an impact on the flexibility of local licensing boards to make decisions. The Scottish Beer and Pub Association, for example, was concerned, with particular reference to the definition of overprovision that the guidance from the national licensing forum would lead to a formulaic approach which would ignore local knowledge.

184. The Committee welcomes the proposed establishment of the National Licensing Forum. The Committee recognises that such a body is vital in providing the Scottish Executive with the detailed knowledge required to develop the guidance and regulations which will be required to support the new licensing system.

185. The Committee notes that decisions on the composition and precise role of the National Licensing Forum have yet to be taken, and that it is intended to review the Forum after two years of operation. Nevertheless, the Committee would welcome further information about its role and composition. The Committee does, however, welcome the commitment made by the Deputy Minister to keep the Committee informed of progress on the Forum over the summer period.

186. On receipt of the progress report from the Deputy Minister on the role and composition of the National Licensing Forum, the Committee will consider, at that time, whether it wishes to take further evidence from the Minister.

Local Licensing Forum

187. Section 10 of the Bill provides for the establishment of local licensing forums. It requires that each council must establish a forum for its area. If the council is divided into licensing divisions, a licensing forum may be established for each area. It also provides that each licensing board shall meet with the local licensing forum once in each calendar year. Schedule 2 sets out the membership and role of the forums.

188. According to the Policy Memorandum the remit of the forum is to—
Local Government and Transport Committee, 7th Report, 2005 (Session 2)

‘[…] 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.

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.’

189. A statutory requirement to establish local licensing forums was welcomed by the majority of witnesses. The Scottish Licensed Trade Association (SLTA) told the Committee—

‘We sit on some local licensing forums up and down the country. The idea of local licensing forums will help to ensure greater community involvement. We are pleased at the way in which the forums are being formed and we hope to be involved in them. They represent a step forward.’

190. Concerns were, however, raised about the effectiveness of the forums. The SLTA highlighted its concerns to the Committee—

‘The licensing forum will advise the licensing board—that will be the policy—but the board will not have to follow that advice, although it will have to give reasons for not doing so. That seems to be a fairly anaemic way of going about things. If the forums do not have some power, they will just be talking shops. We must consider how licensing boards relate to the forums and take advice from them. I have already heard members of licensing boards say that, although the licensing forum will give them advice, they do not have to listen to it; they will just do their own thing anyway. That is no way to go forward.’

191. Schedule 2 of the Bill states that local licensing forum should consist of ‘not fewer than 5 and not more than 10’ and stipulates that the forum should include holders of premises and personal licences; the chief constable for the area of the forum; persons having functions related to health, education or social work; young people and persons resident within the area.

192. A number of witnesses suggested that restricting the forums’ membership could also hinder their effectiveness. The Law Society of Scotland argued that the maximum membership of the forum was too low—

‘[…] there should be flexibility on the number of members of the Forums so that this can be tailored to suit local circumstances. Ten members is too few a number to achieve reasonable representation in larger areas.’

44 Policy Memorandum, page 13
45 OR Col 2268
46 OR Col 2268
47 Law Society of Scotland, written submission
193. City of Glasgow Licensing Board was also in favour of increasing the representation on local licensing forums—

‘The Board also considers that the proposed number of members for a Local Forum is insufficient, particularly for larger areas such as Glasgow. Limiting the Forum numbers to 10 would, in the Board's opinion, exclude some important groups / individuals from the process, which would defeat the aim of being as inclusive as possible. The Board is therefore of the opinion that membership should be widened to include the police, members of the Licensing Board and training providers.’

194. Councillor Attridge of City of Edinburgh Licensing Board also raised concerns about the size of forums and the proposal that boards and forums will be required to meet together only once a year—

‘We have a large forum and believe in working in partnership in a city the size of Edinburgh. Unless we work together, nothing happens. We have a forum of around 50 people. It does not meet once a year, as envisaged in the bill, which would be a waste of time; instead, the board meets the forum before every quarterly board meeting. We have solved problems through our forum, which includes licensing solicitors, agents, council officers, representatives of different types of licensed premises and community councillors—you name it, we have it. If a person is relevant, they are in the forum. The issue is all about including people and working together.’

195. In response to the evidence provided to the Committee, the Deputy Minister assured the Committee that he would give further thought to the size of local licensing forums with particular reference to Glasgow—

‘Yes—again, that is a fair point that has been presented in evidence to the committee. I am happy to reconsider the size of forums. I know that there is a specific issue in relation to Glasgow. That may be the case elsewhere, but I am more familiar with the Glasgow example, having met the chairman of the licensing board there and other representatives. We shall look at that matter.

We will also consider how local forums will be established by way of regulation, so that we can bring secondary legislation to Parliament under the affirmative procedure in order to ensure that Parliament has a formal voice on that and on any review of structures of forums, following appropriate consultation. I am happy to examine closely what the committee says on forum numbers, particularly in relation to Glasgow, and to examine the mechanism in order to simplify the process and to ensure that the committee and Parliament have full roles.’

196. In evidence, the Committee also raised with the Executive the issue of quorum of the forum. The Bill does not specify a quorum and members requested

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48 City of Glasgow Licensing Board, written submission
49 OR Col 2369
50 OR Col 2562
that the Executive look at this issue. The Bill Team Leader indicated that the Executive would re-consider this issue.

197. A number of other submissions to the Committee suggested that the local licensing forum should be linked to the licensing board rather than the local authority, as proposed in the Bill. City of Glasgow Licensing Board expressed this view to the Committee—

‘To maintain clarity and focus, Local Licensing Forums should be linked to the Board and not to the local authority. Although forums are important in terms of the consultation process, they will be better informed / advised on procedural and policy issues via a close association with the Board rather than being supported by officials of the Council who are remote from the process.’\(^5\)

198. South Ayrshire Licensing Board echoed the views of Glasgow—

‘It seems strange that the Licensing Board has no role to play on the Forum. The experience in South Ayrshire is that regular consultation meetings work best when initiated by the Board. Accordingly, South Ayrshire Licensing Board would argue that the Local Licensing Forum should be established by the Board with an independent Convener appointed from outwith the Board.’\(^5\)

199. The Bill Team Leader explained to the Committee why the Bill, as introduced, sought to establish forums which were independent of boards—

‘The decision on the structure of forums was taken as a result of recommendations in the Daniels report that local forums should be independent from boards. There has been a lot of discussion about that point and a wide variety of views have been put forward, particularly among licensing boards, which are pretty much evenly split on whether boards should be directly involved in forums, depending on the models that they currently have set up.

Obviously, with some models, boards and forums are closely linked and they work well. However, the Daniels committee examined the issue and felt that, because the policy role of forums will be defined and important, boards and forums have to be independent under the new system.’\(^5\)

200. The Committee welcomes the establishment of statutory local licensing forums. The Committee also welcomes the proposal that boards will be required to explain to the local forum why they have not followed its advice as being likely to mean that the forum will have a significant and important role within the licensing process.

201. The Committee does, however, have concerns about how representative local licensing forums would be if they were established in

\(^5\) City of Glasgow Licensing Board, written submission
\(^5\) South Ayrshire Licensing Board, written submission
\(^5\) OR Col 2207
the form proposed in the Bill. The Committee is not persuaded that a membership of 10 on a local licensing forum is sufficient to represent as fully as possible the interests of the local community and therefore welcomes the Deputy Minister's commitment to re-examine the question of numbers.

202. The Committee was not, however, persuaded by the evidence of City of Glasgow Licensing Board and South Ayrshire Council regarding the relationship between licensing boards and forums. The Committee supports the conclusions reached by the Daniels Committee, which recommended the separation of the forums from the licensing boards.

LICENCES: TYPES

203. There are currently seven different types of licences: 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. The Scottish Executive argued in the Policy Memorandum that 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.’

204. The Bill proposes replacing the current system with what the Executive claims is a more straightforward and modern licensing system based on two licences – a premises licence and a personal licence. Under the proposals in the Bill, 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 also proposes that various categories of premises, including private members clubs, vessels and vehicles, are brought within the new regime to a greater or lesser extent.

Premises Licences

A single premises licence

205. The Committee heard mixed views on the proposal for a single premises licence. The Scottish Licensed Trade Association (SLTA) told the Committee that while it backed the idea of a single premises licence in principle, there should be three types of premises licence—

‘There are too many licence types. If we are to have one licence, as appears will be the case, it should at least have three differentiated parts. We are in favour of having three licence types: on-sales licences, off-sales licences and entertainment licences. There are a number of reasons for that. We think that

54 Paragraph 70
it would help with the bureaucratic problems and the operating plans. People would know for definite what kind of premises we were talking about.

The disciplines represented by the three types of licence should be kept. If they are not, everyone will compete, which will exacerbate the over-provision problem that we have at the moment. We will get nightclubs operating as pubs, pubs operating as nightclubs and off-sales that are prepared to open 24 hours a day. There will be 17,500 operating plans and 50-odd licensing boards—it goes on and on. That could all be relatively easily stopped if we keep three different types of licence for three entirely different disciplines. Running a nightclub is entirely different from running a pub or an off-sales.\(^\text{55}\)

206. This view was also backed by the Bar, Entertainment and Dance Association. A witness from the Scottish Retail Consortium told the Committee that introducing three types of premises licence might also be of assistance when it came to establishing training programmes for licence holders. The Scottish Retail Consortium pointed out, for example, that the operators of an off-licence might not have much interest in undertaking training suitable for an on-sales premise.\(^\text{56}\)

207. The Scottish Beer and Pub Association took a different approach and was more supportive of the Executive’s proposals, telling the Committee that—

‘We also support the abolition of the current plethora of different licences, which we believe to be unnecessary and bureaucratic, as boards are more than capable of differentiating between the operating plans of different premises and of regulating the premises accordingly.’\(^\text{57}\)

208. The British Hospitality Association (BHA) told the Committee in a written submission that in recent years ‘hybrid’ licensed premises had become increasingly common. The BHA define ‘hybrids’ as being licensed premises which offer a cross between a nightclub and pub and/or restaurant environment. ‘Hybrid’ premises can also include a hotel which has significant bar and function facilities. The submission went on to argue that—

‘Single premises licences and operating plans within the Licensing (Scotland) Bill will make it much easier to describe and provide for such modes of operation as the details of the operation of any premises will be detailed in the operating plan approved by the board. They will also give the flexibility and control needed by Boards and so badly missed in the current legislation.’\(^\text{58}\)

209. Deputy Chief Constable Malcolm Dickson of the Association of Chief Police Officers expressed his view that the proposed streamlining of licences would not create problems—

‘I do not share the fear that doing away with all the categories will lead us into danger, because the demarcation lines are pretty blurred at the moment. In

\(^{55}\) Col 2269

\(^{56}\) Col 2292

\(^{57}\) Col 2347

\(^{58}\) British Hospitality Association, written submission
my experience, there are premises in Edinburgh that are described as hotels in their licences but whose business is certainly not putting people up for a quiet night.'\(^59\)

210. The Committee put to the Deputy Minister the suggestion made by the SLTA that there should be three types of premises licence. In response, he told the Committee that—

‘I am not persuaded by the argument that there should be three types of licence. It is important to recognise the way in which the market is developing. I know that at times I can be guilty of generalising too much in relation to, for example, pubs versus nightclubs, but the concept of how people use such facilities nowadays has changed. Rather than its being ancillary to the provision of alcohol, entertainment is part of the package. I have not been persuaded that the arguments that you raise are as strong as the ones that the Nicholson committee made.

It is also important […] that the differentiation between types of premises is not only recognised but strongly observed in operating plans. That will be at the heart of the system. The focus of the bill is not on offering protection from competition, but on controlling public order late at night. It is not for the Government or Parliament to state how the market should develop in that regard. Our job is to create a regime that allows evolution and change to take place naturally through business activity, and to regulate that activity appropriately. That is why I worry about the suggestion that there be three licences, as opposed to the two that came out of Nicholson.’\(^60\)

211. The Committee notes that a key aim of the new licensing system is to simplify the previously complex system of seven licence types. The Committee is not convinced that introducing three types of premises licence would assist in this objective. The Committee considers that introducing types of licences might encourage the continuation of differential opening hours between each type and might promote artificial distinctions between licensed premises.

212. The SLTA has said that providing for three types of premises licence might help ‘prevent some of the misrepresentations that exist at present where pubs become nightclubs and vice-versa’\(^61\). The Committee considers that attempting to ‘prevent’ such trends in the hospitality industry is unrealistic and counterproductive. The Committee is satisfied that the use of an operating plan which clearly sets out the activities to be carried out on a premises is an appropriate mechanism for licensing boards to judge whether or not to approve a licence. In the view of the Committee there is no need for multiple types of premises licence.

\(^59\) Col 2418  
\(^60\) Col 2563  
\(^61\) Scottish Licensed Trade Association, written submission


Excluded premises: garages and petrol stations

213. The Bill identifies various types of premises which are excluded from being granted premises or occasional licences. In particular, section 115 of the Bill would have the effect of banning the sale of alcohol at motorway service areas and petrol stations and garages.

214. The Policy Memorandum states at paragraph 72 that—

‘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.’

215. West Lothian Council welcomed this proposal on the grounds that it would help to enforce an anti-drink drive message. However, Highland Council expressed opposition, arguing in a written submission that, although in the early 1990s there were arguments that the purchase of alcohol at garages encouraged drink driving offences—

‘There is no empirical evidence to support this claim. In many Highland communities they are often the “corner shop” and to deny them the facility of selling alcohol will not only penalise the local community but also must have a financial impact on many fragile businesses. Officers had understood that the Executive had accepted this argument previously and were surprised to see this proposed in the Bill. The Council has noted that in the Policy Memorandum support is given for the Council’s position but would re-emphasise that the Bill does not reflect this.’

216. The Society of Local Authority Lawyers and Administrators (SOLAR) informed the Committee in written evidence that premises which combine a garage with the only shop in a village are routinely licensed under the existing legislation, and ‘attract no adverse comments’ in relation to their operation. This view was backed by the licensing staff of Dundas and Wilson CS LLP who told the Committee that—

‘We have no knowledge of any petrol station having issues with the sale of alcohol anywhere in the country. They are particularly secure and well regulated.’

217. The Scottish Grocers’ Federation told the Committee in its written submission that—

‘We are extremely worried that petrol stations with attached convenience stores could be deemed under… section 115, to be Excluded Premises. Due to the high cost of petrol many of these such garages would easily be deemed to be primarily so used if purely measured on turnover. We seek clarification on this and would suggest that the measure of the primary function of the garage should be based on profit of the licensed shop premises as a percentage of the whole site profit. Should this exceed 50% then it cannot be deemed to be primarily a garage.’

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62 Dundas and Wilson CS LLP, written submission
This would resolve our serious concerns that garage forecourt shops which could not necessarily be regarded as community resources will have their licenses withdrawn as they will be deemed to be Excluded Premises. This is fundamentally wrong and needs to be addressed urgently in order to reduce the current uncertainty in the marketplace.’

218. In evidence, the Committee put the points raised by witnesses to the Deputy Minister, who told the Committee—

‘You will not be surprised to hear that I am rather worried by that. It is probably the wrong thing for a minister to do but I can give a constituency example. I am going to the island of Unst off Shetland this weekend because there is an application for a hydrogen project. The petrol station at Baltasound is just as you described. There is a strong argument about the example that you have just used and we are considering how to address that.’

219. The Committee is not clear how the Executive proposes to meet the commitment made in the Policy Memorandum that community stores / petrol stations in rural areas would not be ‘adversely affected’ by the proposals in the Bill. Whilst the Committee accepts the need to send out a clear signal that drink driving is unacceptable, the Committee is concerned that the Bill as drafted might have a serious impact on the provision of local services in rural areas where a garage doubles as the only local shop. The Committee believes that there may be a case for amending the Bill to remove such garages from the list of ‘excluded premises’. The Committee is encouraged that the Deputy Minister appears willing to revisit this issue, and recommends that he provides a response to the Committee two weeks in advance of the commencement of Stage 2.

Vessels, vehicles and moveable structures

220. The Policy Memorandum explains that vessels selling alcohol would be required to apply for a premises or an occasional licence under the proposals in the Bill. If a vessel is not permanently moored or berthed in a particular place, the Bill provides for premises licences to apply to these vessels as though they were premises situated at the place where they are normally moored or berthed. A vehicle or moveable structure 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.

221. In a written submission, Caledonian MacBrayne Limited raised a number of concerns as to how the provisions of the Bill would apply in relation to its operations. Its submission set out concerns, for example, that its ferries would be classed as ‘premises’ under the Bill, but it would be difficult for them to obtain a premises licence, as this would require the submission of various documents including a planning certificate and a building standards certificate, neither of which are normally applicable to sea-going vessels. Caledonian MacBrayne also pointed out that its ferries are not ‘normally moored’ at a single location, which would create problems in terms of applying for a premises licence.

222. The submission raises a number of other concerns and concludes that—
'It is our intention to ensure that our vessels reflect the requirements and needs of the travelling public where alcohol is part of the offer, but only a small part. If the costs – both financial and operational – are too great we would have to consider the viability of providing this service. If the burden of compliance with this Bill proved too restrictive or too costly then the only option would be to withdraw the sale of alcohol from ferries.'

223. A written submission from Northlink Orkney and Shetland Ferries Limited raised similar concerns to those highlighted by Caledonian MacBrayne.

224. The Deputy Minister told the Committee that—

‘Discussions are on-going with both Caledonian MacBrayne and NorthLink Orkney and Shetland Ferries in relation to exactly such issues. The problem of where a ferry operator would be licensed is not insurmountable. The headquarters of a ferry company may be in a set location—logically, that area's licensing board's jurisdiction would apply. Such matters are under discussion with the ferry operators, along with other issues that are yet to be resolved.

The view is that, for longer crossings, ferries are licensed premises and need to be subject to the same licensing laws as other licensed premises. We must ensure that we sort out the practicalities of that, such as the availability of a single premises licence holder, but such problems are not insurmountable. We will work them through with the ferry companies.’

225. The Committee welcomes the Deputy Minister's commitment to work with the ferry operators to resolve the problems which they have identified. The Committee draws to the Deputy Minister's attention the submissions it has received. The Committee recommends that the Deputy Minister considers whether amendments to the Bill are required at Stage 2 to address the ferry companies' concerns, including, for example, the need to identify appropriate certification for vessels when applying for a premises licence.

Vehicles hired for entertainment purposes

226. The Committee has also heard concerns about the licensing arrangements for vehicles, such as limousines, which are hired for entertainment purposes. It is possible that alcohol might be served on such vehicles whilst they are moving. It is not clear how the supply of alcohol within these vehicles would be regulated under the new licensing regime proposed by the Bill.

227. The Committee is concerned that a lack of a reference to vehicles hired for entertainment purposes might represent an omission in the Bill, and recommends that the Executive should investigate whether such vehicles will in fact be licensed. The Committee requests a response on this point two weeks in advance of the commencement of Stage 2 of the Bill. If there is any doubt as to whether this particular type of vehicle will be covered by the provisions in the Bill, the Committee recommends that the Bill is amended at Stage 2 to include them within the new licensing regime.

63 Col 2609
Personal Licences

228. The Policy Memorandum states that the proposed new personal licence is intended to ensure that anyone managing premises is suitably qualified to do so. Under the proposals in the Bill, each premises must have a ‘premises manager’ who is named on the premises licence as the person responsible for running that premises. According to the Executive, the emphasis is on ensuring appropriate training for licence holders, both in the applicable law and in how to deal with customers.

229. The Executive states that the new system represents a move away from the judgement of whether an applicant is a ‘fit and proper person’ as required under the Licensing (Scotland) Act 1976. Under the proposed new arrangements, 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. These relevant convictions would 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.

230. Sheriff Principal Nicholson told the Committee in his written submission that he was concerned that the Bill as drafted did not provide a right of appeal to a personal licence holder who has been the subject of sanctions imposed for offences carried out under section 75 (conduct inconsistent with the licensing objectives) or section 77 (suspension of licence after multiple endorsements). These sanctions could include suspension of the licence for up to 6 months or revocation of the licence.

231. In evidence to the Committee, a Scottish Executive solicitor conceded that the Bill as introduced had not included such an appeals mechanism, but that—

‘When the bill was introduced, the appeals mechanism was incomplete because we were still in discussion with the sheriffs principal about the best way forward on that... we will spell out in the bill all the provisions that will be open to appeal. In short, those will be substantive judgments by licensing boards, as opposed to purely procedural matters. They will be spelled out by amendment at stage 2.’

232. The Committee considers that it is regrettable that an appeals process for personal licence holders was omitted from the Bill as introduced. The Committee notes the commitment of the Executive to return to this issue at Stage 2. The Committee expects to be kept informed of the Executive’s thinking in relation to the issue of appeals as it develops, and will consider carefully any amendments brought forward by the Deputy Minister. The Committee addresses the issue of appeals for persons who object to premises licences later in this report.

64 Col 2609
Occasional Licences

233. The Bill provides for licensing boards to be able to grant occasional licences for the sale of alcohol on application from a premises licence holder, a personal licence holder and a representative of any voluntary organisation (for example, a representative organising catering for an event). Occasional licences would have a duration of no more than 14 days and the Bill provides for the number of licences that may be granted in a year to a voluntary body to be increased. The Bill provides for occasional licences to be subject to the appropriate standard national licence conditions and any local conditions which the licensing board may determine.

234. The Committee heard support for the proposals in the Bill relating to occasional licences from voluntary organisations such as the Campaign for Real Ale. However, the Committee also heard various concerns about the proposals. A representative from the Lorn, Mid-Argyll, Kintyre and Islay Divisional Licensing Board told the Committee that—

'I foresee a huge workload with occasional licences in particular. I noticed that the clerk must pass objections to occasional licences to the applicant. Obviously, that will not happen so often with permanent licences, but if there are up to 16 licences for organisations a year, there will be a huge workload for the clerk in notifying the applicant and vice versa. I visualise a lot of extra work if the public object to occasional licences.'

235. Councillor Attridge of the City of Edinburgh Licensing Board also expressed concern at the potential extra workload created by occasional licences and also highlighted the fact that untrained staff could be used at an event which is taking place using an occasional licence—

'I think that the figure of four occasional licences in section 53 could be increased, but 56—that is more than one a week—could become a nuisance and the use of untrained staff would become an issue. It is not common sense to have such a high number of occasional licences. Training, or the lack of it, is one of our worries.'

236. Alcohol Focus Scotland raised similar concerns and argued that—

'The events that voluntary organisations run tend to be good, because they are often aimed at wider audiences than a small, targeted section of the community—they are about families and wider sections of the community—but there is a risk that, if people at such events are not involved in the educational process and dispense or sell alcohol without understanding what they are doing, all the other provisions on licensing will be undermined.'

237. COSLA proposed to the Committee that there should either be a reduction in the number of occasional licences granted to a particular body (for example, to one per calendar month), or the status quo as defined in current legislation should

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65 Col 2363
66 Col 2364
67 Col 2444
be maintained. COSLA also felt that occasional licensees should be subject to the same training requirements as other personal licensees.

238. The SLTA argued in its written submission that occasional licences should only be granted to suitable personal licence-holders and the licence-holder should be present at the event.

239. The Licensing Law Sub-Committee of the Law Society of Scotland stated in a written submission that the provisions in the Bill as drafted relating to occasional licences set out a ‘cumbersome administrative procedure that could be simplified considerably’. The Society argued that the provisions of the 1976 Act generally worked well, and that a fast-track procedure should be introduced, with the Clerk to the licensing board given delegated powers to deal with applications.

240. The Committee considers that it would not be appropriate for detailed training to be given to representatives of voluntary organisations who sell alcohol at events held using occasional licences. However, the Committee considers that there may be scope for a basic form of training to be given to representatives of voluntary organisations so that they are aware of their responsibilities in selling alcohol. The Committee would not want this training requirement to be onerous – it could, for example, take the form of a package of information which all applicants for occasional licences are required to read and understand. But the Committee considers that even a basic level of instruction and training would be beneficial and would address some of the concerns which were highlighted in evidence at Stage 1. The Committee recommends that this issue should be considered further by the National Licensing Forum.

241. In relation to the potential extra workload created by the proposed new arrangements for occasional licences, the Committee considers that it is too early to say whether or not the number of applications would increase significantly, or whether or not this would create any significant problems for licensing boards. Regardless of the impact, the Committee does not think the extra workload would represent an insurmountable problem or that a desire to avoid an increased workload is a good justification for maintaining the status quo.

LICENCES: ADMINISTRATIVE ARRANGEMENTS

Open ended licences

242. The Bill proposes that a premises licence would not require renewal every three years as is currently the case. Instead, it would run for as long as the premises continued to operate in compliance with the licence.

243. The Scottish Executive Bill Team Leader told the Committee—

‘Under the new regime, licences for premises will be open ended. The Nicholson committee thought that appropriate because there is no reason why a licence that is specific to certain premises, that is accompanied by a
detailed operating and layout plan and that makes everything about the 
operation of those premises clear up front should not be open ended. 

I should point out that such an approach is accompanied by a system of 
variations. For example, a licence holder can apply for permission to vary a 
licence. Such an application will be advertised and people will have an 
opportunity to object to it. Variations can also be made to a licence if 
problems arise with the premises.68

244. The Committee heard concerns from some individuals and organisations 
that the removal of the renewal process would see the loss of a ‘focal point’ for 
potential objectors, such as residents living near a licensed premises, to licence 
applications. This point was made to the Committee by local residents in the 
Glasgow City Council Licensing Board area during an informal committee event 
held in Glasgow in April. The Greater Glasgow Alcohol Action Team also told the 
Committee in a written submission that it—

‘Noted the recommendation to discontinue the process of advertising 
applications in the newspaper [and] partners expressed strong concern about 
this, considering that applications for renewal may not come to public 
attention unless they are advertised locally in the press. It is hoped that this 
will be reconsidered.’

245. The Deputy Minister defended the loss of the renewal process. He told the 
Committee—

‘I do not have any concerns in that regard. You mentioned the licensing 
standards officers; they will have a strong role in relation to local people, 
community councils and others who take a strong interest. The proposals 
give licensing boards strong powers of review, so there are plenty of 
mechanisms to ensure that local people do not feel in any way disfranchised 
or cut out of the system. People know the current system but I would argue 
that the system is being reformed very positively. Far from having less of a 
role, people will have a stronger role.’69

246. The Committee notes the concerns expressed by some witnesses 
about the proposed end to the three year renewal process. The Committee 
notes that the Deputy Minister’s position is that the new licensing regime 
will allow stronger community involvement in the licensing process via the 
local licensing forums, and that complaints about anti-social behaviour 
associated with a licensed premises could be made known quickly via the 
Licensing Standards Officers. The Committee notes, however, that it is 
difficult to assess how effective the new arrangements will be in addressing 
local concerns about licensed premises, and therefore recommends that the 
new National Licensing Forum reviews and monitors this aspect of the new 
licensing regime. The Committee further recommends that Ministers should 
ask the National Licensing Forum to co-ordinate a public information 
campaign designed to inform the public about their rights under the new

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68 Col 2189
69 Col 2566
licensing system and the procedures by which the public can highlight concerns about licensed premises.

**Objections to licence applications**

247. The Policy Memorandum states that—

‘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.’

248. The Bill Team Leader explained to the Committee that—

‘We are widening out to any person the list of people who can object to a licence. Under the current regime, boundaries with that list have caused difficulties: they have excluded people on housing groups and school boards from being able to object to a licence. That will not now happen.’

249. The Scottish Licensed Trade Association expressed concerns about this proposal and told the Committee that—

‘Unfortunately, we must draw a line somewhere. We would say that that line should correspond with the licensing board’s area of jurisdiction. That said, there is nothing to prevent someone from sending a letter to a licensing board to tell them that there is a problem with a premises. There would be nothing wrong with that, but with formal objections we must draw the line somewhere. The police should be able to object, too. We are firmly in favour of their being brought into the system.’

250. West Lothian Licensing Board highlighted a suggestion that objections should only be permitted from persons living within the licensing board area. This view was backed by the Glasgow City Council Licensing Board.

251. Evidence from the Licensing Law Sub-Committee of the Law Society of Scotland suggested that there would be the potential for serious administrative delays if the proposals in the Bill relating to objections were enacted as drafted. The Law Society of Scotland expressed the view that ‘any person’ was far too broad a category of potential objectors, and suggested that objectors should be restricted to persons who had a real and/or material interest in the application or were likely to be adversely affected by any proposals. This view was also backed by Dundas and Wilson CS LLP.

252. Sheriff Principal Nicholson also raised concerns in his submission to the Committee, writing that—
‘I have to say that I have considerable reservations about the wisdom of opening the door to potential objectors to such an extent. Suppose, for example, that there were to be an application for a premises licence in, say, Edinburgh or Glasgow. Suppose then that there is a Free Church minister in Stornoway who is a fervent and committed prohibitionist in relation to the sale and consumption of alcohol, and he decides to object to the application in question. Because of his genuinely held views it cannot really be said that his objection is frivolous or vexatious. But, is it really sensible that he should be heard in opposition to an application for a grant of a licence in Glasgow or Edinburgh? In my view there should be some sort of geographical qualification for an objector.’

253. The Scottish Beer and Pub Association argued in a written submission—

‘We would suggest that the right of “any person” to lodge objections as defined in the Bill is too wide. Although Boards can recoup costs from those lodging “vexatious or frivolous objections,” in practical terms there will still inevitably be unnecessary additional costs for Boards and applicants will bear additional legal costs. Given that it is their livelihood, it is clear that any applicant or licensee will employ legal advice as early as possible in dealing with any objections or complaints and that will add to their costs. We would suggest restricting the right for objection to those who can show a “real and material interest” as suggested by the Daniels Committee which helped inform the drafting of the Licensing Bill.’

254. COSLA was also not certain that the Bill, as drafted, should refer to ‘any person’, stating—

‘The consensus in COSLA is that we should open up the process to more objectors, but that it would be better to contain objections within the relevant licensing board area. There may be a need to review who can be statutory objectors, so that people such as MSPs and MPs can object. They may not live in the board area, but they might want to articulate a position.’

255. Robert Millar, Clerk to the Edinburgh City Council backed the proposals set out in the Bill—

‘Frivolous and vexatious objections can still be ruled out—which is fair enough—but the remaining objections will require to be dealt with. I am confident that councillors who serve on the licensing committees and are experienced in dealing with the Civic Government (Scotland) Act 1982—which has a different approach to objections and representations—will be aware that it is possible to handle a large volume of objections, including many that are not made on the basis that the objector lives in close proximity to the premises in question. There is a well-tried civic government system and a welcome extension in the field of liquor has been proposed.’

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73 Scottish Beer and Pub Association, written submission
74 Col 2373
75 Col 2362
256. The Deputy Minister defended the proposal to allow anyone to object to licence applications, telling the Committee—

‘The process should be inclusive rather than exclusive. If I remember rightly, the committee heard evidence from the chairman of the Edinburgh licensing board... His evidence was persuasive. Licensing boards use a number of criteria when they assess whether an objection is relevant. The example of the minister from Stornoway in the report by Gordon Nicholson is becoming part of folklore. All I would say about it is that, if the said minister from Stornoway has a strong view about a new superclub in Glasgow and wishes to object to it, I do not see why he should not write a letter. I suspect that the clerk of the licensing board would put the letter in the pile of letters from people who are objecting on first principles. The letter would be noted. That would be fair; our process should not rule people out. We have discussed various core principles of the Licensing (Scotland) Bill this afternoon. One of those principles is communities’ right to be involved and local people’s right to express a view.’

257. The Committee welcomes the proposal to allow anyone the right to object to a licence application. The Committee believes that the advantages of opening up the licensing process to all outweighs any possible administrative burden created by increased numbers of objections. In relation to this possible burden, the Committee seriously doubts whether there will be large number of objections to licence applications received from individuals residing in areas outwith the licensing board area in which a particular premises was situated. Even if such objections were received, the Committee considers that the licensing board could readily put in place administrative arrangements to deal with them. The Committee recommends that Ministers should ask the National Licensing Forum to provide best practice guidance to licensing boards in relation to the procedures for dealing with objections, to help boards ensure that genuine and relevant objections are given proper attention.

Appeal rights for objectors

258. Sheriff Principal Gordon Nicholson raised a further issue relating to objections in his written submission—

‘Under existing law rights of appeal are conferred on objectors (1976 Act, s. 17(5) and (6)), and I consider that it would be contrary to natural justice for the persons whom I have mentioned to be denied a right of appeal in future. I hope that the current omissions in the Bill are merely a drafting oversight and do not reflect a policy decision.’

259. This issue was also highlighted by the Society of Local Authority Lawyers and Administrators (SOLAR) and in a number of other written submissions provided to the Committee. South Ayrshire Licensing Board told the Committee is a written submission that—

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76 Col 2585
'The Bill, whilst relaxing the qualifying criteria for objectors, does not provide objectors with a right of appeal. This does not seem equitable and a right of appeal should be restored.'

260. In evidence, an Executive solicitor told the Committee that the Executive intends to lodge amendments at Stage 2 to introduce a right of appeal but that—

'A person who objects to an initial application will not be allowed to appeal; appeals will be allowed only from somebody who seeks to have an application reviewed after it has been granted.'

261. Following this evidence session, the Committee received a letter from the Executive confirming its intention not to allow an initial right to appeal for objectors to applications for licences.

262. The Committee is concerned at the proposal that objectors to applications for premises licences will not be given the right to appeal against a decision taken by a licensing board. The Committee considers that such an appeal provision is important to allow a statutory review process for failed objections that could address issues that may adversely affect the local community. The Committee recommends that, in bringing forward amendments at Stage 2, the Executive should reconsider its position and introduce an appeals process for all persons who object to applications for premises licences, provided that their initial objection has not been deemed to be frivolous or vexatious by the licensing board.

Local authorities holding licences

263. The Committee considered the question of whether local authorities should be able to hold licences. This issue arose after the Committee was told that the Bill could be challenged under European Convention on Human Rights legislation on the basis that it was not fair that members of local authorities – councillors – were taking decisions on whether a local authority should be granted a licence.

264. This issue was highlighted to the Committee by Sheriff Principal Gordon Nicholson, who stated in his written submission that—

'My [...] comment relates to the matter of ECHR compliance (see paragraphs 163 to 165 of the Policy Memorandum). Notwithstanding what is said in these paragraphs I remain firmly of the view that an ECHR challenge is possible if a local authority is to remain a competent objector and if a local authority is to continue to be able to apply for, and to hold, a licence in its own name.'

265. The Deputy Minister addressed this issue in evidence to the Committee, stating—

'We met Sheriff Principal Nicholson a couple of weeks ago. Neither I nor any other minister is allowed to introduce legislation that he knows is not ECHR

77 Col 2609
78 Letter from Jacqueline Conlan, 2 June 2005
compatible. I assure you that we have checked the matter seriously and in considerable detail and do not have concerns about it.\textsuperscript{79}

266. A Scottish Executive solicitor went on to explain that—

‘Over the past 18 months, we have gone into the matter with great care. As members know, no bill can be introduced to the Parliament unless it has been cleared by the law officers. The Presiding Officer can also object. There has been no suggestion of an objection from the law officers or the Presiding Officer.

Some of the jurisprudence that was available when we considered the issue had not come on stream when the committee first met to discuss it. The main point is that the availability of judicial review gives one an almost complete defence against a challenge under the ECHR. We will have wider rights of appeal than we had under the 1976 act. Appeals will go to the sheriff principal, but capping appeals will be the keystone of judicial review. Our firm view is that that makes the system ECHR compatible. We would be happy to give full chapter and verse to the committee, if members would like it. At the moment, we can assure the committee of our complete confidence that the bill is ECHR compatible from a legal point of view.\textsuperscript{80}

267. The Committee notes this reassurance by the Executive.

Fees

268. As noted previously, the Policy Memorandum states that the new licensing regime is intended to be self-financing, with full cost recovery being obtained through the licence fee charged by local authorities. The Executive has expressed support for 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. In addition, it is proposed that some fees may still be one time fixed fees, such as fees for personal licences and occasional licences.

269. The Bill provides for Scottish Ministers to have powers to make regulations that would set out matters relating to licence fees. The Executive is currently undertaking a review of the licence fee in order to set it at a level which would allow full recovery of costs under the new regime.

270. In evidence, the SLTA commented on the review of the licence fees, and told the Committee—

‘One thing is for sure: it is going to be difficult to come up with something that pleases everybody. When we examine the potential cost of liquor licensing standards officers and so on, we can see the costs mounting up. The fair approach would be to base fees on the ability to pay, so bigger places would

\textsuperscript{79} Col 2590
\textsuperscript{80} Col 2590
pay more than smaller places. We have taken no view on that yet, but the costs will be significant.81

271. The Scottish Beer and Pub Association suggested that the administrative arrangements for the new regime should be as straightforward as possible—

‘Our concern in the Scottish context is to ensure that, when the new licensing boards have been established, they do not gold-plate the mechanisms that they put in place. I mean no disrespect to the witnesses from local government who are sitting behind us, but I know, from spending six years in local government, that on occasion, when it is putting in place a new structure, local government tends to gold-plate and perhaps over-engineer solutions. It is important that when the new regime is put in place, we try to keep costs to a minimum, consistent with good enforcement and the necessary legislation.’82

272. However, the Association went on to concede that—

‘It is difficult to speculate how things will work until we see the Executive's proposals for a fee structure and local authorities' proposals for licensing functions in their areas.’83

273. The Federation of Small Businesses complained to the Committee that—

‘It is obvious that the costs to a licensing board will increase significantly merely by employing licensing standards officers, and it is inevitable that, if a board's increased costs are passed on to businesses through the fee system, costs to businesses will increase. That is why we make a plea for licensing standards officers to be employed in the same way as local authorities employ trading standards officers.’84

274. The Scottish Grocers’ Federation (SGF) argued that the licence fee should be structured in such a way that licensed premises were banded according to their rateable value. A number of other organisations commented on the issue of licence fees and explained how the fees could affect their activities. The Coal Industry Social Welfare Organisation supported a fee structure which was based on the turnover of a particular licensed premises. The National Union of Students told the Committee that it was—

‘Looking for a tiered approach, depending on the size and capacity of a premises, although we pointed out that size and capacity do not always equate to volume. We have concerns about what are termed hybrid premises. A lot of smaller student associations are used as cafe-bars that do not sell alcohol during the day, but become bars in the evening. The

81 Col 2282
82 Col 2355
83 Col 2356
84 Col 2452
premises might be large during the day, with a much smaller capacity in the evening, serving people behind a small bar.\textsuperscript{85}

275. A representative from Argyll and Bute Council made the point that—

‘A big concern is how we will pay for the [Licensing Standards] officers. I am sure that the committee has heard before from Argyll and Bute Council about the issue of sparsity—the population is spread throughout the area. Argyll and Bute Council cannot afford to subsidise the officers, so they will have to be funded either out of the fees or centrally.’\textsuperscript{86}

276. In a written submission, Glasgow City Council Licensing Board stated—

‘It is unclear whether or not the new licence fee will be standard as is the case now, or whether a form of ‘banding’ will be introduced, similar to the scheme currently in use in England which, it is understood, is based on the Rateable Value of the premises. However, the English experience to date is that such a system has proved iniquitous and that the operation of the new licensing system relies on ‘cross subsidies’ from other Council operations.’

277. COSLA suggested that there could be some flexibility in the new fees regime—

‘I would love to be able to offer a magic solution, but, unfortunately, COSLA has not considered the mechanics of the fee structure, although we will seek full cost recovery from the fees. COSLA accepts that that will mean a significant increase in fees, but we propose that, instead of being presented with a set fee structure, councils should be allowed, within mutually agreed parameters, to set the fee structure for each board area.’\textsuperscript{87}

278. In response to this evidence, the Deputy Minister told the Committee that—

‘There are understandable concerns from the trade about the fees review that is under way. In reforming licensing law, we are making significant changes to the regime and all licensed premises will have to go through a process of change, which is not without its critics. I suspect that if we laid on top of that another area of expenditure, we would find it much more difficult to deliver the reforms with the broad support of the trade… Members know that a fee review is under way. I must allow the review to conclude and then consider its recommendations.’\textsuperscript{88}

279. The Committee notes that details of the fees regime will be prescribed by Ministers in regulations, following the completion of the fees review. It is therefore difficult for the Committee to make detailed comments on how the new fees regime might operate in practice in advance of the regulations being published.

\textsuperscript{85} Col 2309  
\textsuperscript{86} Col 2369  
\textsuperscript{87} Col 2378  
\textsuperscript{88} Cols 2583 and 2606
280. The Committee wishes, however, to highlight a number of points raised in evidence, which the Executive should take into account in developing the new fees regime. First, the Committee considers that the fees regime should allow flexibility so that licensing boards can take account of local circumstances when setting fees, within an overall framework set by the Executive.

281. Second, the Committee considers that there should not be a flat licence fee rate: fees should take account of different types and sizes of licensed premises. In the view of the Committee, a new variable fees regime should be flexible enough to take account of the many different types of licensed premises. If, for example, fees were only set according to the rateable value of a premises, organisations such as museums, with a high rateable value but containing only a very small licensed bar, might be unduly penalised.

282. Third, the Committee has heard concerns from business groups about the potential burden of increased licence fees, and the Executive should have regard to these representations in developing the new fees arrangements and, in particular, the impact of any one-off ‘start up’ costs associated with the new arrangements.

283. The Committee expects the Executive to keep it fully informed about progress of the development of the new fees regime and also asks the Executive to provide draft proposals for the new fee regime in advance of their publication and/or their laying before the Parliament. The Committee will consider, on receipt of these draft proposals, whether it will wish to consider taking further evidence from the Minister.

**OPENING HOURS**

*Hours*

*Permitted hours*

284. The current system of ‘permitted hours’ was introduced by the Licensing (Scotland) Act 1976. The 1976 Act also set 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.

285. The Policy Memorandum argues 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. According to the Policy Memorandum, ‘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.’

286. Under the proposals in the Bill, a holder of a licence would be required to specify the opening hours of a premises in the operating plan submitted to the licensing board for approval. This would be drawn up with regard to the board’s
published policy statement, which would set out its general approach to policy on licensing hours for its area.

287. The SLTA told the Committee that it was strongly against this provision in the Bill. It stated in a written submission that—

‘There is unanimous endorsement amongst our members that the Association cannot support what is effectively the abolition of Permitted Hours and Regular Extensions in favour of a system where there will be no statutory prohibited hours. We are of the opinion that such action will do nothing to further or uphold the licensing principles.

If the intention is to leave the whole question of opening hours to the vagaries of operating business plans and the whim of Licensing Boards, then this would lead to an unacceptable range of inconsistencies. In our view, the introduction of such a system will become nothing but a ‘free for all’. It is our contention that to uphold the licensing principles the availability of alcohol must be controlled. If there is a presumption against 24-hour opening in Scotland, where should the line be drawn – 23 hours?

The logic behind offering the off-trade the opportunity to open longer hours escapes us. The problems they are experiencing in terms of binge drinking, underage drinking, promotion of high strength alcohol and irresponsible promotions are well documented.’

288. The Scottish Grocers’ Federation was also opposed to the proposed abolition of permitted hours, stating in a written submission that—

‘We have argued from day one that we do not want (a) 24 hour licensing, (b) variations in licensing hours from board to board, and (c) a system which could allow out-of-town superstores to open 24 hours but at the same time inhibit local shops from opening beyond the specified time by local boards. We must reiterate that this will only produce inconsistency and potentially create havoc in the marketplace.’

289. On the other hand, the Scottish Beer and Pub Association (SBPA) was supportive of the proposals in the Bill, and argued—

‘We fully support the proposals to end the permitted-hours approach to pub trading hours. Given that the vast majority of premises have been granted regular extensions beyond the permitted hours in response to customer demand, it would be meaningless to retain the permitted-hours approach.’

290. The SBPA was also relaxed about the possibility of regional variations to licensed premises opening hours, telling the Committee that—

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89 Col 2347
‘We must accept that individual boards will make judgments about local circumstances, which will be reflected in the trading patterns of their areas. That is the regime that is to be introduced and we support it.’

291. In evidence to the Committee, the Deputy Minister commented—

‘As I am sure that the evidence has illustrated, 11,000 out of the 17,000 licensed premises in Scotland already have regular extensions, so the system is not perfect at the moment; that is one of the arguments that is driving change. It will be for licensing boards to decide on the overall approach that they want to take in any area. If there is concern that clubs could empty at different half-hour periods in the course of an evening because that is what they have applied for, it would be appropriate for a licensing board to achieve consistency in closing times through its standard conditions. Closing times do not have to be staggered. Licensing boards can have a policy on that and I have no doubt that they will have such a policy.’

‘We cannot make any assumptions about how the system will work out. It is a classic case of one size not fitting all. There will be lots of variation in the number of people in different geographic areas, and therefore in the number of facilities.’

292. In light of the fact that the majority of licensed premises now have regular extensions to their opening hours, the Committee is of the view that the concept of ‘permitted hours’ is increasingly not relevant in a modern licensing system. The Committee does not accept the view of the SLTA that it is undesirable for opening hours to be decided by a licensing board. On the contrary, the Committee considers that a licensing board is the right forum for such decisions to be taken. The Committee considers that the Bill will allow licensing boards the opportunity to consider what opening hours are appropriate for each individual licensed premises and it is possible that particular premises that are the focus for anti-social behaviour could have their opening hours restricted. The SLTA has also complained that an end to permitted hours will lead to ‘an unacceptable range of inconsistencies’. The Committee disagrees and believes that an approach to licensing which removes inflexible opening hours and replaces them with variations in hours according to local circumstances, with the National Licensing Forum providing an overall policy framework, is to be welcomed.

Occasional extensions

293. The Committee took evidence on the impact of the proposed end to the issuing of ‘occasional extensions’ to licences. Instead, it is proposed that details of a licensed premise’s operating hours would be set out in its operating plan. This change was opposed by a number of witnesses, including the National Union of Students who argued that when drawing up an operating plan it would be impossible to know precisely when extensions to ‘regular’ opening hours would be
required. Instead, the NUS argued that operating plans should include an allowance for a certain number of occasional extensions each year.

294. The City of Edinburgh Council Licensing Board supported the retention of some sort of provision for ‘occasional extensions’, telling the Committee in a written submission that—

‘The Edinburgh Board recognises that hours of operation will require to address occasional extensions and suggests that Boards should lay down their intentions for occasional extensions in their statements of policy. This would allow all premises to operate extended hours during such periods as approved by Boards without a need to vary the operating plan.’

295. The Scottish Beer and Pub Association told the Committee in a written submission that—

‘We do not believe in practical terms that Boards would be prepared to grant licensed premises occasional extensions under the proposals in the Bill, nor do we believe that it is possible for a licensee far enough in advance to seek an occasional licence for an office party or wedding reception in terms of the current provisions of the Bill. We would suggest therefore that there need to be separate provisions on this issue in the Bill, consistent with the 1976 Act.’

296. Dundas and Wilson CS LLP explained how the Bill might be amended in a written submission to the Committee—

‘It is of concern to us that there will be no option for boards to grant occasional extensions for specific events, i.e. sports events, weddings, funerals, parties etc... It is obviously impossible for applicants of premises licences to always know in advance when special occasions are likely to arise at the time of submitting their operating plan and a blanket inclusion of such hours would be inappropriate in an operating plan. It is our view that provision requires to made for licenceholders to be able to apply for occasional extensions over and above the hours contained in their approved operating plan without having to go through an extensive and potentially expensive procedure. Time is often of the essence for such hours and cost of obtaining same a material consideration.’

297. In evidence, the Deputy Minister appeared willing to listen to these concerns. Questioned by the Committee about occasional extensions of permitted hours for events which might not be able to be included in an operating plan, the Deputy Minister stated—

‘My understanding of the word "occasional" is that it must mean occasional, but we would be happy to consider that issue again. There is an argument

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93 City of Edinburgh Council Licensing Board, written submission
94 Scottish Beer and Pub Association, written submission
95 Dundas and Wilson CS LLP, written submission
The Committee is concerned that requiring an applicant for a licensed premises to set out every detail of its proposed opening hours in the operating plan could be unduly restrictive. There may be occasions, such as catering for a wedding or a funeral, when it will not be possible to know well in advance that ‘unusual’ opening hours will be required. This appears to be an omission in the Bill as drafted, which was identified by a number of witnesses.

The Deputy Minister did not give a detailed response to this evidence, but the Committee is encouraged by the fact that he seemed willing to look at this issue again. The Committee recommends that the Executive brings forward amendments at Stage 2 of the Bill to provide for a system of occasional extensions in certain tightly-defined circumstances, such as when an extension is required at short notice. However, the Committee would not want a provision for occasional extensions to be abused. The operating plan is the correct mechanism for setting out the opening hours of a licensed premises, and the Committee considers that any system of occasional extensions introduced at Stage 2 should not compromise this basic principle.

24 hour licences

Section 60 of the Bill states that if an application for a licence would result in alcohol being on sale on a premises during a continuous period of 24 hours or more—

‘The Licensing Board must refuse the application unless the Board is satisfied that there are exceptional circumstances which justify allowing the sale of alcohol on the premises during such a period.’

The Explanatory Notes state that the ‘exceptional circumstances’ test would have to be applied on a case by case basis, and that guidance would set out national guidelines on the policy that should be adopted by licensing boards in relation to circumstances that might merit 24 hour opening. Boards would be required to set out their policy on licensing hours for their area in their policy statements.

Sheriff Principal Gordon Nicholson stated in his written submission that the provisions in the section—

‘Would not be triggered at all if an applicant were to stipulate an opening period of 23 hours and 59 minutes; but such a period would be likely to be seen as being just as objectionable as a period of precisely 24 hours. ConsequentlY, if this provision is to remain, I would respectfully suggest that the trigger point should be a number of hours just beyond what might
normally be regarded as acceptable – say, 18 hours or something around that figure.’

303. Peter Daniels, Chair of the Working Group on Off-sales, told the Committee—

‘There has been a popular myth that the Nicholson report would mean having 24-hour opening, but the boards could decide to reduce the licensing hours from their present level. None of the subsequent discussion focused on that, but it is a real possibility. If a board thought—for whatever reason—that the licensing hours in its area were too generous, it might decide to reduce those hours.’

304. The presumption against 24 hour opening was supported by Willie Caie of Safer City Centre Initiative, the Salvation Army, and the Royal College of Nurses Scotland. The Greater Glasgow Alcohol Action Team also supported this position, but indicated that it did not know what impact that presumption would have on the number of premises in Glasgow opening later or what would be the overall impact on the city as a whole.

305. The Chief Medical Officer told the Committee—

‘The available evidence is that severely restricting opening hours increases the possibility that people will consume large amounts in a short time. I do not see the hours provision as being wrong. In fact, it is written in the right way. There is a general presumption against 24-hour opening, which will happen only in exceptional circumstances.’

306. Alcohol Focus Scotland expressed concern that the ‘exceptional circumstances’ test was not robust enough—

‘We can see no circumstances where 24 hour drinking is in the public interest. Even in the case of festivals or other special events, we think for reasons of public health and public order that the selling of alcohol should cease for a period of hours. We are also concerned the wording that such licences ‘be granted only in exceptional circumstances’ may not prove sufficient. One only has to look at the existing legislation to find examples of measures that were intended to be ‘exceptional’ but have in practice become routine. For instance extensions to permitted hours were to have been the exception but in practice have proved to be the norm.’

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98 Sheriff Principal Gordon Nicholson, written submission
99 Col 2259
100 Col 2479
101 Alcohol Focus Scotland written submission
307. The Deputy Minister told the Committee—

‘There is a presumption in the bill against 24-hour drinking—we could not spell it out in starker terms. We are taking a different approach from the ones taken elsewhere. The matter is as simple as that.’\(^{102}\)

308. The Committee notes the presumption against 24 hour drinking which is contained in the Bill. The Committee considers that this provision in the Bill will have an impact in tackling the problems associated with drinking only if it is used in conjunction with other measures in the Bill such as banning irresponsible drinks promotions and the use of Licensing Standards Officers.

309. The Committee gave some thought as to whether a cut-off point of 24 hours was appropriate. Inevitably, any time limit selected will be somewhat arbitrary in nature. However, in relation to the 24 hour limit, the Committee had concerns that allowing licensed premises to advertise ‘24 hour drinking’, even in exceptional circumstances, might send out a signal that drinking for very long periods of time is an acceptable reason for visiting a particular licensed premises. The Committee also noted that the provision in the Bill could have the consequence that certain licensed premises may never close – or close only for very short periods.

310. As an alternative, the Committee was attracted by the suggestion made by Sheriff Principal Nicholson that 18 hours might be a more appropriate cut-off point. The Committee is not yet convinced that 24 hour drinking is required in Scotland, even in exceptional circumstances, and requests further evidence from the Executive ahead of Stage 2 of the Bill on why this cut-off point was selected, rather than the 18 hours highlighted by Sheriff Principal Nicholson. As things stand, the Committee considers that 18 hours is a more appropriate cut-off point than the 24 hour limit set out in the Bill.

**LICENCES: OTHER ISSUES**

**Children and Licensed Premises**

311. The Policy Memorandum identifies three main provisions in Bill in relation to under-age drinking by children and young people—

- ‘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’.

- Licensees offering an on-sales service to be required to think actively and seriously about whether their premises are suitable for children by choosing whether to “opt in” to access by children... The only mandatory licence condition would be the provision of baby changing facilities accessible to both

\(^{102}\) Col 2567
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.  

312. The Executive’s Bill Team Leader told the Committee that—

‘The policy on access by children will appear in the operating plan. A paper by the expert group that has been submitted to the Subordinate Legislation Committee and to your committee makes it clear that there will be questions in the operating plan about access by children to on-sales licensed premises. There will also be a mandatory national licence condition on access by children, and that too appears in the paper for the Subordinate Legislation Committee.’

313. The Committee took evidence from Sheriff Principal Gordon Nicholson, who suggested that more details could be placed on the face of the Bill in relation to the access by children to licensed premises. He stated that—

‘My personal view… is that the bill should contain some general indication of policy. I quite accept that the operating plan will be what determines what is or is not appropriate in relation to individual premises, but there has to be some kind of starting point—or presumption one way or the other, to use the legal terminology—upon which you can build or from which you can subtract.

One reason why that is important […] is that it is sometimes not entirely clearly understood that licensed premises are not only public houses but places such as hotels, cinemas, sporting clubs, theatres and so on.’

‘Opting in’ or ‘Opting out’

314. The Policy Memorandum states that licensees would be required to ‘opt in’ to access of their premises by children. There were mixed views on the merits of this proposal.

315. The Scottish Beer and Pub Association informed the Committee in its written submission that—

‘We took the view that an ‘opt-out’ system should apply to access to a licensed premises by children. We believed this would help address the early education of young people in the acceptable and responsible supervised use of alcohol rather than continuing to present licensed premises as somewhere that they should not be allowed to enter. We hold to that view going forward and would wish the Committee to consider this issue.’

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103 Paragraph 138
104 Col 2198
105 Col 2221
316. This view was supported by Mitchells and Butlers plc, a leading operator of managed pubs, bars and restaurant in UK, and by Glasgow City Council Licensing Board which stated in written evidence that—

“There is a concern that there are no substantive provisions in the Bill dealing with access to licensed premises by children. It is considered that an opportunity has been missed to create an expectation that all premises licensed to sell alcohol should be suitable for children to be present unless they specifically choose to ‘opt out’ of doing so in terms of their operational plans - which request to opt out would then require the approval of the Board.’

317. However, the Belhaven Group plc ‘strongly disagreed’ with this view in a written submission to the Committee, stating that it agreed with the statement in the Policy Memorandum that licensees should think carefully before ‘opting in’ to allowing access by children. It also expressed the view that any presumption in favour of access by children would be contrary to the licensing objective set out in the Bill of protecting children from harm.

318. Various witnesses supported the position in the Bill as drafted. Diageo Great Britain stated in written evidence that—

“We were delighted to see that the Bill proposes to address the problem of underage drinking. The offences relating to the consumption, procurement, retail, or allowing the retail sale, of alcohol to children or young people under legal purchase age, are robust and will, in our view, be of considerable assistance in reducing underage drinking.’

319. The Deputy Chief Medical Officer for Scotland told the Committee that—

“The Bill proposes an important change to the relationship between minors and licensed premises. As members know, there is a presumption that licensed premises can apply to have minors on those premises. If they do so, they must make the case for why that is reasonable. I do not object to the provision. It is seeking to follow the model of what could be characterised as southern European patterns of alcohol behaviour—to normalise the presence of children when adults are drinking wine with a meal, for example. However, it is only fair for me to point out to the committee that not all countries are taking that approach.’

320. In relation to the argument about licensees ‘opting in’ or ‘opting out’ of access to their premises by children, the Deputy Minister told the Committee—

“That is a judgment call. We want to ensure that premises are suitable for children and have the appropriate facilities […] The judgment call is that having an opt-in would strike the right balance and be the right way of structuring the system. We believe that that approach will encourage members of the trade who want to attract families and operate in that aspect of the market to ensure that their facilities and services are attractive. If they

106 Col 2476
seek to operate in the context of welcoming children and attracting families, they will need to do so by meeting particular market needs and, in the context of licensing legislation, the requirements of regulations. The issue is about striking the right balance, which is why we wanted an opt-in process rather than one that might not achieve the policy objectives that we might all share in regard to changing attitudes.

[...] There are a lot of premises out there that are not suitable for children. That is at the core of the matter and perhaps I can express the point in that simple way. I am not arguing the negative or trying to overemphasise the point; I am not arguing that there is a mass of reasons why we should choose one route rather than the other. It is a judgment call and on that basis we have chosen an opt-in mechanism. One could go to every part of Scotland—to all our communities and every part of our cities, towns and villages—and find premises to which one would not want to take one's children. Our view is that the opt-in mechanism will mean that many premises will want to attract the family market and provide the relevant facilities. Most of them will comply straight away. We think that an opt-in mechanism is the best way of achieving our objective.'

321. The Committee notes the comments from Sheriff Principal Gordon Nicholson and others in relation to the lack of a policy on the face of the Bill relating to the access of licensed premises by children. If the Executive has a clear position that an opt-in approach to the access of children is desirable, the Committee would question why this clear principle has not been included in the Bill. In relation to the relative advantages of an opt-in versus an opt-out approach, the Committee is persuaded that many licensed premises in Scotland are not suitable for children and so an ‘opting-out’ approach to access by children would not be appropriate.

322. However, the Committee does accept that establishing a ‘family friendly’ atmosphere in some pubs and certain other licensed premises is a desirable objective and could help change Scotland’s drinking culture. The Committee recommends that the Executive should consider whether it can do more to encourage licensed premises, where appropriate, to become more ‘family friendly’ with appropriate facilities for children and families. The Committee considers that encouraging such a culture change should be a role for the National Licensing Forum, who could produce national guidelines for licensed premises seeking to adopt a ‘family friendly’ policy. The Committee also considers that Ministers should ask the National Licensing Forum to review the progress being made by licensed premises towards implementing such policies 5 years after the enactment of the Bill and consider what further action might be required.

Exclusion orders and removal from premises

323. The Bill provides that where a person is convicted of a violent offence committed on, or in the immediate vicinity of any licensed premises, the court may make an order prohibiting the person from entering the licensed premises

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107 Col 2568
concerned, and such other licensed premises (if any) as the court may specify in the order.

324. Section 86 of the Bill provides that where an individual breaches the terms of an exclusion order, that person, upon conviction, could face a fine not exceeding £2,500 or imprisonment or both. A premises licence holder is entitled to remove a person who has breached an exclusion order from the premises concerned and to use reasonable force if necessary. A police constable is also authorised by this section to remove the person from the premises concerned.

325. Sheriff Principal Gordon Nicholson expressed concern about the power given to the premises licence holder in the Bill to use reasonable force—

‘I am bound to say that those provisions are a can of worms. If section 86 stands as it is, I can foresee all sorts of people getting forcibly ejected by licence holders, raising actions for damages and taking their case through the courts. They could claim damages because the licence holder had used more than reasonable force, saying, for example, that they got a black eye as a consequence. The provision is undesirable. I heard Jacqueline Conlan say that the Executive would revisit the matter. I certainly hope that it does so.’

326. Superintendent George Clelland of Strathclyde Police told the Committee—

‘I share Sheriff Principal Nicholson’s concerns. I accept that there is a limited power to use force, for example in self-defence or when effecting a citizen’s arrest. There are also issues with door stewards—in practice, they are allowed to escort people from premises, but I do not doubt that a reasonable degree of force is sometimes used in doing that, although when a steward goes too far, they can be subject to action. However, to give the proposed power to citizens would be dangerous.’

327. In evidence, a Scottish Executive solicitor told the Committee that—

‘The Bill echoes previous legislation and the common-law position is that the publican can use reasonable force. Like previous legislation, the Bill puts a statutory duty on publicans not to allow disorderly conduct and drunks in their pubs. Publicans cannot stop such conduct unless they can use reasonable force; the only alternative would be waiting until the police arrive, by which time it is often too late. The ability to use reasonable force has been a cornerstone of such legislation for at least 30 years and it is the common law. A pub cannot be run without a publican having the right to use reasonable force to keep an orderly house.’

328. In a letter to the Committee, the Scottish Executive Bill Team Leader elaborated on the current legal position—

‘The landlord of a licensed premises is not obliged to serve anyone and can use reasonable force to eject someone who refuses to leave (See Licensing

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108 Col 2238  
109 Col 2263  
110 Col 2582
Although if a person is disorderly and refuses to leave, the landlord can summon the police for help, it is an offence for the landlord under section 78(2) of the Licensing (Scotland) Act 1976 to permit such behaviour and he cannot just rely on the police but must, if necessary, physically evict the disorderly person himself. Otherwise the landlord may be putting others at risk from the disorderly behaviour. The landlord as occupier of the premises has also a duty of care to his customers under the Occupier's Liability Act 1957 to make sure that they are reasonably safe.\footnote{Letter from Jacqueline Conlan, 2 June 2005}

329. On a related point, the Committee understands that the Executive has been considering for some time a number of options designed to regulate the use of door stewards in licensed premises, possibly by extending the remit of the Security Industry Authority to Scotland. It is noted that from 11 April 2005 all door supervisors in England & Wales have required to be licensed by the SIA. In order to qualify for a licence, door supervisors must undergo an identity and criminal background check, undertake a training course and pass the assessment to ensure they meet set levels of competence and professional standards.

330. The Committee notes the Executive's reassurance in respect of the use of reasonable force. The Committee considers that the proposed training regime for personal licence holders could provide an opportunity for sharing good practice on handling disorderly behaviour and removing people from licensed premises. The Committee therefore recommends that these issues are addressed in the training regime for personal licence holders (and, where used, stewards) when it is introduced in due course.

331. The Committee also asks the Executive to consider whether the arrangements in respect of regulation and training of door supervisors in England and Wales could be adapted in order to provide for an introduction of a similar scheme for Scotland to coincide with the commencement of the Licensing (Scotland) Act 2005.

Training

332. The Policy Memorandum states that—

'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.'\footnote{Paragraph 142}

333. The Bill provides for mandatory training for licensing board members, personal licence holders and staff serving alcohol. It is proposed that 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. According to the Executive, this training 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.

334. These proposals were welcomed by a number of organisations including Moray Council on Addiction and Alcohol Focus Scotland.

335. The Scottish Licensed Trade Association told the Committee that—

‘All operators and staff should be trained—we have crusaded for that for a long time. We are committed to such training and are happy to see it, but we would also like there to be an experience requirement for licence holders. An 18-year-old could hold a licence, but we do not agree that they should be able to do so. We think that they should have at least a couple of years’ experience because people need experience as well as training.’

336. Kevin Swoffer of the Scottish Retail Consortium told the Committee that staff training should be carried out at an appropriate level—

‘There is a strong argument, which we fully support, for formalised, accredited training of the licence holder and designated supervisors to ensure that there is understanding at the management and supervisory levels in each retail store. However, we would find it difficult, costly and burdensome to take that right down to individual checkout operators, because of staff turnover and the hours of working in that environment. Many operators are students who work for a small number of hours.

In a retail organisation, there are supervisory staff on the premises at all times. We are making every attempt to ensure that those are trained staff, and that they have the licence holder's authority to sell alcohol. It would be burdensome to ask a 16-year-old checkout operator to go through formalised training, but she should be trained to a level at which she understands that one of her responsibilities is not to sell alcohol to anybody under 18 or to anyone who is not in a fit state to purchase alcohol.’

337. The concept of training being carried out at an appropriate level was also supported by the Coal Industry Social Welfare Organisation. The Scottish Beer and Pub Association also told the Committee that they—

‘It will do the industry a lot of good to uprate the training that is given and for training to be made mandatory […] There should be a responsible person on the premises who has been fully trained, and the casual employee should be given some form of on-the-job training when they start the job—even if it is only a trial shift, during which they are shown the proper way in which to do
things and health and safety issues are explained, such as how to recognise when people are intoxicated.\textsuperscript{115}

338. However, there was some concern among student organisations at the proposals in the Bill in relation to training. The National Union of Students highlighted in particular that—

‘One of our worries about that is in respect of students as employees. Under a three-month limit, some establishments might employ people for two months and 30 days, but before it was necessary to put them through training their employment would cease and someone else would be employed. That could easily be done in areas where a high number of students are available for employment and are looking for jobs. We urge the Executive to think about such issues and to consider the consequences and how they would affect students as a workforce\textsuperscript{116}

339. This view was also expressed by Heriot-Watt University Students Association in a written submission which claimed that the ‘three month rule’ could mean that student staff are employed in pubs and sacked after three months to avoid the requirement for training. It should be noted, however, that the ‘three month rule’ in the Bill applies only to the holder of the premises licence, rather than all staff working on the premises, which might address some of the concerns of the student organisations.

340. The Federation of Small Business also expressed concerns at the cost implications for its members of the new requirements for training personal licence holders.

341. City of Glasgow Licensing Board’s written submission pointed out that the details of the proposed training regime are not on the face of the Bill and will instead appear in regulations—

‘It is noted that regulations have still to be produced regarding training of staff etc. The question of an appropriate standard of training for staff in licensed premises, particularly in connection with casual staff, occasional licence holders and staff employed in private members clubs, must be addressed.’

342. In response to the concerns which some organisations had expressed in relation to the proposed new training requirements, the Deputy Minister told the Committee that—

‘Training will be the subject of considerable discussions and of consideration by the proposed national licensing forum. The great majority of businesses have nothing to fear in respect of training, because most businesses that take their operations seriously already train their staff. It is inconceivable that someone would run a business that is subject to a series of licence conditions without the staff who must deal with those conditions day in, day out and hour in, hour out being aware of them. Training requirements will be

\textsuperscript{115} Cols 2354 and 2355

\textsuperscript{116} Col 2300
such that businesses will be aware of the regime and can comply with it and respond positively to it. Our initial discussions with the trade suggest that there are very few concerns about training because it is, in the great majority of cases, built into the operations of the business.\footnote{Col 2603}

343. The Committee has addressed the issue of training for occasional licence holders above. In relation to training for holders of premises licences, the Committee notes that much of the detail of the proposed training standards will be set out via regulations. The Committee recommends, however, that the proposed training standards are sufficiently flexible to differentiate between types of employee in licensed premises, so that all staff receive training appropriate to their role and responsibilities.

**Transitional arrangements and ‘grandfather rights’**

344. The issues of transitional arrangements and so-called ‘grandfather rights’ have arisen repeatedly during the Committee’s Stage 1 consideration of the Bill.

345. The term ‘transitional arrangements’ refers to the arrangements to be adopted in moving from the current licensing regime to the new one proposed in the Bill. The term ‘grandfather rights’ was utilised during the passage of 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 regime. Although the two terms are inter-related, it is perhaps important to note that they are not interchangeable terms and refer, in the main, to different sets of issues.

346. The Policy Memorandum sets out the Scottish Executive’s position. In respect of transitional arrangements, it notes that—

‘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.’\footnote{Policy Memorandum, p36}

347. On the question of grandfather rights, the Policy Memorandum says—

‘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.\textsuperscript{119}

348. The main stakeholders in relation to these questions are licence holders and the industry in general on the one hand, and licensing boards and those involved in the administration and management of the regime on the other. This was reflected in the evidence received by the Committee.

349. In relation to grandfather rights, strong views were expressed by representatives of the industry. The Scottish Licensed Trade Association (SLTA), for example, stated—

‘We have to have grandfather rights. If someone has a pub that has been granted a continuation of its licence for the past 20-odd years, would they now have to apply for a new licence? The pub might not be up to standard on access, for example. I know of some pubs whose door widths do not comply with building control standards. It would be ridiculous to say to the licence holder, "You've got to apply for a new licence and all that that means." Are we really going to say to somebody who has been in the business for 20 years, "You're going to have to apply for a new licence, but your premises are not up to new building regs so you're not going to get it"? That is nonsensical.'\textsuperscript{120}

350. The Scottish Beer and Pub Association (SBPA) also had clear views—

‘We would not want the conferral of grandfather rights to prevent premises from being adapted for disabled access, for example, if such adaptation were possible. Grandfather rights are a separate issue, which is to do with ensuring that someone can continue trading and keep their licence and trading hours under the new regime, and with ensuring that someone who has traded for many years is not obliged to produce building and planning consents that might go back 20 or 30 years. Everyone would know that the licensee had the consents, because they were still trading, but if licensees were forced to produce the documents, they might incur substantial costs for not much benefit.

If there is a requirement to make physical adaptations to buildings, individual licensing boards should be able to address the matter, but that issue is mainly separate from the issue of grandfather rights.'\textsuperscript{121}

351. Belhaven Group plc, in written evidence to the Committee, expressed a similar viewpoint—

‘We fully support the SBPA point about the protection of so-called “grandfather rights”. Licensed traders have invested considerably to create facilities which are empathetic with the business plan for the premises and they should not be denied the right to continue to operate for at least the

\textsuperscript{119} Policy Memorandum, p37
\textsuperscript{120} OR Col 2272
\textsuperscript{121} OR Col 2357
same hours as are currently permitted under the existing licensing regime. To reduce the scope of trading activity for existing businesses would be contrary of the principles of natural justice.

The protection of grandfather rights is important not only to licensees but it is also a required protection for banks, brewers and other third parties who lend substantial sums of capital to licensees to enable them to purchase and develop their premises.122

352. Most licensing boards did not comment on grandfather rights, but the City of Edinburgh Licensing Board told the Committee—

‘[…] We have some premises that we would not want to have grandfather rights to keep putting on certain kinds of what they call entertainment. We do not agree with grandfather rights. We envisage the majority of licensed premises carrying on as they are, but there are some that give us cause for concern, mainly because we have no means of controlling what they put on—indeed, under the bill, we would still have no control. Those premises cause considerable problems in Edinburgh city centre. […]’123

353. The Society of Local Authority Lawyers and Administrators (SOLAR) expressed similar views—

‘SOLAR is opposed to automatic grandfather rights. Our view is that boards should have the discretion to deal with applications for licences in accordance with their policies. Allowing automatic grandfather rights would simply re-license what is there at present, even though every board has a small number of premises that give concern and which need to be addressed. If discretion was left with the boards, those premises and licence holders could be addressed by way of conditions.’124

354. In respect of transitional arrangements, in as far as these could be separated from the issue of grandfather rights, most industry stakeholders called for a lengthy transitional period. The Scottish Grocers’ Federation, for example, noted—

‘We have considered the main proposals received so far on transitional arrangements and have concluded that although a Big Bang one-off conversion would be preferred, it is probably not practical or feasible for a) local authorities to cope with and b) licensees to ensure they comply accurately.’125

355. Licensing boards had concerns over the administrative burden likely to be place on them by the transition to the new system.

122 Belhaven PLC, written submission to Local Government and Transport Committee
123 OR Col 2371
124 OR Col 2377
125 Scottish Grocers’ Federation, written submission to Local Government and Transport Committee
356. Aberdeenshire Council called for a ‘lengthy transitional period’ while the City of Aberdeen board referred to a ‘considerable workload for Board staff,’ and a concern over ‘perhaps having to deal with the old and new system simultaneously.’ Highland Council referred to a ‘considerable administrative burden,’ whilst South Ayrshire Licensing Board noted that ‘a tremendous amount of work will be required between the passing of the Bill and its commencement.’

357. Glasgow City Licensing Board, in a written submission to the Committee, noted—

‘Transitional provisions require to be clarified as soon as possible to allow Boards to ‘gear up’ to operate the new system. This matter is of extreme importance for the regulatory authorities. [...] It is understood that the experience in England is such that the transitional arrangements have failed miserably resulting in a complete lack of response from current licence holders as regards conversion to new licences. This is the kind of difficulty that needs to be avoided at all costs. It is anticipated that there will be great difficulty in attempting to ensure an even spread of applications during any transitional period. Licence holders will either identify an advantage in ‘converting’ early or alternatively will leave it until the last minute - it is difficult therefore to see how an even spread can be ‘engineered’. In addition a short transitional period will entail great practical / logistical difficulties for the larger Boards in processing new applications with operating plans etc timeously. A long transitional period will present difficulties due to staff having to operate two systems simultaneously.’

358. The Committee questioned the Deputy Minister and his officials on the questions of grandfather rights and transitional arrangements. On the question of grandfather rights, the Deputy Minister was clear—

‘I am not persuaded by the blanket grandfather rights that you describe, which would simply mean that nothing would change. That is not what licensing reform—30 years after the Licensing (Scotland) Act 1976—is about. That would not be right. [...]’

359. On the question of transitional arrangements, the Deputy Minister told the Committee—

‘The Bill team are in constant discussions with the trade. A lot of work will be done on the matter in the coming months not only to ensure that businesses fully understand the implications of the new act—subject to when Parliament passes it and in what form Parliament passes it—but to give them time to respond. We will not bounce a big industry in Scotland into compliance on day two after passing an act on day one. I want to be very clear [...] on that point.'

126 City of Glasgow Licensing Board, written submission to Local Government and Transport Committee
127 OR Col 2603
A lot of work still has to be done on the transitional period. The matter is still being considered with the trade and with licensing boards. We are taking the work forward, for example with small groups of licensing clerks who know their areas, know their businesses and know the trade. We are working in conjunction with the bill team to set up a fair and workable system. The system must be fair during the transitional period and businesses must have the opportunity to move into the new regime.\textsuperscript{128}

360. Pressed further on the issue of transitional arrangements, the Bill Team Leader reported—

‘I have recently set up a small group of five clerks to consider transitional arrangements. [...] The primary purpose of the group is to consider the practicalities and administrative difficulties of transition. We acknowledge those difficulties [...]. We are aware of what is happening in England and Wales, and I am going to [...] discuss some of the problems that they have encountered. I hope that we will be able to avoid the same problems up here. […] We acknowledge, as do the licensed trade, that whatever form transition takes, it will be sensible to ensure throughput of applications so that existing licence holders who are transferring to the new system cannot simply do so when they want to. To ensure throughput, the transfer will have to be at a time of our choosing.’\textsuperscript{129}

361. The Committee is encouraged by commitments made by the Deputy Minister and his officials to work with the trade and consult further on the question of transitional arrangements. The Committee believes that the Executive must attempt to balance the requirement for the industry to have a reasonable period in which to become familiar with the new regime, with the need not to have the licensing boards operating two systems for any longer than is necessary. The Committee considers that a transitional period of up to twelve months could be seen as a reasonable period but does not wish to be prescriptive about this because it is hopeful that a consensus can emerge from the discussions with the trade and the working group of licensing board clerks which has recently been set up.

362. On the question of grandfather rights, the Committee accepts that there should be no automatic transfer of licences to the new system, and that in order to avoid a two-tier licensing system, it will be necessary for a re-appraisal of all existing licences to ensure compliance with the requirements of the new system.

363. The Committee accepts that there will be ‘traditional’ licensed premises and listed or historic buildings which may be difficult to adapt to modern standards and may require considerable investment in order for such adaptations to be carried out. However, the Committee does not agree with sections of the licensed trade that such premises should simply be allowed to carry on regardless. Facilities like disabled access, separate toilets for

\textsuperscript{128} OR Col 2603
\textsuperscript{129} OR Col 2605
men and women and baby changing facilities (where appropriate) do not seem unreasonable demands in the twenty first century. The Committee therefore calls on the Executive to engage the industry in more detailed discussions about the transition to the new regime in respect of those businesses which are likely to experience particular difficulties in adapting their premises, with an understanding that all licensed premises will have to comply with current building standards. The Committee also calls on the Executive to consider granting an interim licence, for up to three years, to allow the required investment to be secured, plans to be drawn up and alterations or improvements to be carried out, with the understanding that all premises would have to meet current standards if their operators wished to continue trading there at the end of the interim period.

Investment in areas surrounding licensed premises

364. The Committee heard informal evidence during its visit to Glasgow of the impact that licensed premises can have on a community in terms of increased amounts of litter, noise and anti-social behaviour. The Committee heard the view that in some circumstances it might be appropriate for licensees to contribute to the increased costs of cleansing and policing where problems were directly attributable to the existence of licensed premises in an area. It was also felt by some members that licensees could also be encouraged to invest in the areas surrounding their premises, for example by the installation of CCTV.

365. The Committee recognised that it had taken no formal evidence on this matter, and that there could be a number of potential difficulties, for example, in seeking to impose an additional levy on businesses which already pay non-domestic rates. Nevertheless, the Committee felt that the matter should be examined further by the Scottish Executive.

366. The Committee therefore calls on the Executive to consider whether there are practical ways in which licensees may be required to contribute to increased policing and cleansing costs and to invest in outside infrastructure improvements like CCTV.

OVERPROVISION AND IRRESPONSIBLE DRINKS PROMOTIONS

367. This section of the report deals with the Bill’s provisions in respect of what is referred to by the Bill as ‘overprovision’ of licences and ‘irresponsible drinks promotions’.

Overprovision

368. The background to the Bill’s provisions in respect of overprovision is set out in the Policy Memorandum—

‘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.’

369. The Policy Memorandum goes on to explain that licensing boards would be required to make a ‘proactive assessment of local provision, in consultation with the police, local communities and the licensed trade.’ Boards would then be required to include, in their licensing 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 be free to determine what constitutes a ‘locality’ for this purpose. There would also be flexibility for boards to decide whether, in any particular locality, there was overprovision generally or only in relation to a particular sector. The Policy Memorandum also notes that the proposed National Licensing Forum is to be asked to provide early advice to Ministers on what constitutes overprovision and how it should be tackled. This advice would form the basis of ministerial guidance which would set out the national policy.

370. The majority of the evidence received by the Committee was broadly in favour of the proposal, but some witnesses questioned whether it was really necessary.

371. Belhaven Group plc, in a written submission argued—

‘We understand the need for licensing boards to assess over-provision but we wonder whether the content of this Clause has been fully thought through. It will be very difficult to consider over-provision when there is only one type of premises licence. A blanket ban on the grant of new licences by any licensing board could be a serious barrier to the economic development of Scotland and to the detriment of both our own citizens and visitors to our country.’

372. Mitchell and Butler, which operates 108 licensed premises in Scotland argued that the overprovision proposals were not necessary—

‘We do not support the establishment of a “duty to assess overprovision.” We believe that the Board’s discretion should not be fettered in such a manner, as they must have regard to the needs of their community both from a business and from local residents’ interests. We believe the licensing principles adequately deal with this issue and give the Board sufficient powers to consider all the issues in determining an approach which is appropriate to the area in which they operate and of which they have proper local knowledge. We understand that the National Licensing Forum will examine the definition of overprovision and we would be concerned that Boards will be obliged to operate a formulaic approach on this issue which would be inherently restrictive. Please note also that overprovision

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130 Policy Memorandum, p12
131 Ibid
132 Belhaven Group PLC, written submission to Local Government and Transport Committee
assessments rarely take account of factors like a large number of licensed premises being increasingly food reliant businesses, rather than just drink-led businesses.\textsuperscript{133}

373. A similar case was argued by Punch Taverns, which owns 450 leased or tenanted pubs in Scotland—

‘I cannot see any additional need for a ‘duty to assess overprovision’. [...] I am also most concerned should any ‘overprovision assessment’ affect my company’s ability to invest in our pubs. I understand that any increase in licensed trading area would fall foul of this overprovision clause. This would severely restrict plans already underway to provide smoke free areas in our pubs as creating sheltered and heated external areas would mean increasing the licensed areas. The proposed legislation on banning smoking in all enclosed public places in Scotland next Spring makes this increasingly important.’\textsuperscript{134}

374. The Law Society of Scotland’s Licensing Law Sub-Committee was also doubtful that the overprovision elements of the Bill were required—

‘The Sub-Committee would seek clarification with regards to the relationship between sections 4 and 7 of the bill. If a Board has to take into account the licensing objectives when determining whether or not an application for a licence should be approved, would this not adequately address the potential mischief identified in section 7?’\textsuperscript{135}

375. Representatives of the off-sales retail trade also expressed doubts about the way in which overprovision might be assessed. In its written submission to the Committee, the Scottish Retail Consortium argued—

‘There are many SRC members whose business is primarily the sale of groceries and the alcohol sales make up only a relatively small proportion of their turnover. There is concern that if there are a number of off licences in the same locality as a small grocery store then refusal of a licence could occur depriving a community of a food store and limiting consumer choice. The SRC therefore believe defining over provision is likely to be fraught with uncertainty and difficulty and may prevent responsible operators from setting up or continuing business. We believe that genuine over provision is dictated by competitive pressures within the marketplace. Here again there is sufficient provision within the licensing legislation to revoke a licence of an offender, but to refuse an application in the first place, where there is no evidence of malpractice, could be argued as being illogical and discriminatory.’\textsuperscript{136}

\textsuperscript{133} Mitchell and Butler, written submission to Local Government and Transport Committee
\textsuperscript{134} Punch Taverns, written submission to Local Government and Transport Committee
\textsuperscript{135} Law Society of Scotland Licensing Law sub-committee, written submission to Local Government and Transport Committee
\textsuperscript{136} Scottish Retail Consortium, written submission to Local Government and Transport Committee
376. The Scottish Licensed Trade Association (SLTA) agreed that there was overprovision, but was critical of the Bill’s proposals, arguing instead that there should be a moratorium on new licences—

‘The easiest approach would be to introduce a moratorium. On a given day, we should say, "That's it; the pub estate in Scotland is complete. People can transfer within the system, but we have enough licences already." That has happened in other parts of the world and it works. It has been done in Ireland and has not ruined competitive business there—the Irish pub is the most copied brand in the world. The measure has helped the Irish to keep up standards and to combat alcohol abuse. A similar measure here would do the same. It can be said against us that we are trying to protect the trade, but we are trying to protect its integrity, dynamism and diversity.’\(^{137}\)

377. Other representatives of the industry, however, did not agree. The Scottish Beer and Pub Association, for example, did not agree that there is an over-provision in licensed pubs, and stated—

‘Our association does not believe that a moratorium should be introduced on the issuing of new licences, which would inflate unjustifiably the value of licences in Scotland. Such a measure would act as a barrier to new operators taking over underperforming premises, stifle legitimate competition and undermine attempts to improve the quality of the Scottish pub estate.’\(^{138}\)

378. Representatives of the police were broadly supportive of the Bill’s proposals in respect of overprovision, although there were concerns about consistency of approach. The Association of Chief Police Officers in Scotland (ACPOS) noted—

‘The police service welcomes the bill's approach to over-provision, but there should be clarity about how over-provision will be measured. We do not suggest that the standards in relation to over-provision should be the same in the centre of Glasgow as they are in the centre of Alloa. However, there must be a consistent approach.’\(^{139}\)

379. Other witnesses, however, considered that the approach in the Bill, of allowing licensing boards to devise their own methodology and definition of localities in respect of assessment of overprovision was the correct one. The Federation of Small Businesses (FSB) for example argued—

'It cannot be dealt with by national limits or recommendations. Licensing boards must be trusted to consider each application on its merits and to take into account local problems raised by the police, so that applications are considered based on local evidence and the absence or existence of local problems.'\(^{140}\)

380. Some witnesses had concerns over the details of how overprovision would be assessed. The Law Society of Scotland Licensing Law Sub-Committee,
considered in its written evidence that ‘the lack of a definition of “locality” is problematic.’\(^{141}\) South Ayrshire Council was also concerned over the lack of definition of ‘capacity.’\(^{142}\)

381. Glasgow City Council Licensing Board, in a written submission, told the Committee—

‘These concerns relate to the determination of an appropriate definition of ‘locality’ and the subsequent assessment of licensed premises within the defined locality to determine over provision given that there will no longer be specific and easily identifiable licence types. In particular it is unclear how different and distinct localities can be defined in urban areas having large conurbations. In determining over provision the Bill appears to allow Boards the option of considering either all licensed premises in a locality, or only those of a ‘particular description’ in any carrying out any over provision assessment. Again in the absence of easily identifiable licence types it is unclear how Boards are to properly categorise premises ‘of a particular’ description in order to compare like with like. [...]’\(^{143}\)

382. Similar concerns over the way in which boards would distinguish between different types of application, in a situation in which there were to be only two types of licences, were expressed by a number of other witnesses, including the Campaign for Real Ale (CAMRA), the Scottish Grocers’ Federation (SGF) and the Scotch Whisky Association, which noted—

‘Concern has been expressed on possible unintended consequences in any assessment of overprovision purely on the basis of the number of licences issued, rather than giving consideration to the circumstances of each individual licence. It would seem inappropriate, for example, to halt the issue of a licence to a new distillery visitor centre, that would support local jobs by generating tourism in the area, solely on the grounds that the Board had reached its quota through the granting of licences in the neighbouring town.’\(^{144}\)

383. The Scottish Grocers’ Federation argued that whilst the assessment of overprovision would not affect existing off-sales premises it ‘would undoubtedly have a bearing on new builds or extensions in future business estates.’\(^{145}\) The Federation also provided details, based on a survey of 400 convenience stores, which showed that licensed drinks constituted an average over the year of 20% of total sales.

384. The Committee questioned the Deputy Minister on some of the issues raised in evidence, most particularly on the question of how boards would be able to

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\(^{141}\) Law Society of Scotland Licensing Law sub-committee, written submission to Local Government and Transport Committee

\(^{142}\) South Ayrshire Licensing Board, written submission to Local Government and Transport Committee

\(^{143}\) Glasgow City Council, written submission to Local Government and Transport Committee

\(^{144}\) Scotch Whisky Association, written submission to Local Government and Transport Committee

\(^{145}\) Scottish Grocers’ Federation, written submission to Local Government and Transport Committee
distinguish between different types of application under a regime where there was to be only one type of on-sales licence.

385. The Deputy Minister noted—

‘The definition of overprovision is part of the work of the national forum. We all recognise the important split between national and local policy and the importance of the ways in which those levels integrate. I believe that the operating plan, as the heart of the process, will allow local boards to make appropriate decisions in relation to particular applications. However, at the same time, because boards will have done overprovision assessment, which will be a three-year rolling assessment in their area, against a background of a national definition and an agreed set of criteria […]. As the process works through […] the operating plan and our associated proposals will deliver what we have in mind.’

386. The Committee also had concerns over whether numbers of licences would be used as a crude measure of overprovision, perhaps with the result that, for example, an application for a licence for a restaurant could be refused, on the basis that there was a general overprovision of licences within a locality. The Committee therefore welcomes the clarification from the Executive that the Bill provides that licensing boards shall consider overprovision in general or ‘licensed premises of a particular description.’

387. The Committee rejects the position of the Scottish Licensed Trade Association, which, whether intentionally or not, has undertones of a wish to protect the market share of its existing members and prevent legitimate competition. The Committee also considers it is not in the interests of Scotland’s tourism and hospitality industry to allow no future growth in on-sales licensed premises.

388. However, on the question of the overprovision elements of the Bill, the Committee, on balance, accepts that they are necessary and appropriate, although it has a number of reservations about the practicalities for licensing boards in proactively assessing over-provision. The Committee recognises that there is a role for communities to have some input into the assessment of overprovision, as provided for by the Bill. However, the Committee would wish this to be balanced with a need to safeguard the existence of a vibrant retail sector, and in particular the viability of small grocery shops and foodstores which might not achieve sufficient turnover to ensure the survival of the business were they not be granted a licence.

389. The Committee concludes therefore that the guidance to be issued by the Scottish Ministers, following advice from the proposed National Licensing Forum, will be crucial. The Committee also considers that the guidance must also be informed by input from the regulatory bodies regarding the practicalities of the process, especially if there is to be no representation on behalf of those authorities on the national forum. It is understood that the guidance will be subject to consultation in draft form.

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146 OR Col 2564
before facing Parliamentary scrutiny under the affirmative resolution procedure. The Committee is likely to take evidence on the Executive’s proposals in respect of overprovision before the SSI comes before it in due course.

Irresponsible drinks promotions

390. The Policy Memorandum notes that—

‘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. […] 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.’

391. The Scottish Executive has decided that the most appropriate approach is the ‘non-differential’ pricing policy under which licence holders are required to maintain their price list for a minimum of 48 hours with prices only being decreased or increased on a 48 hour frequency.

392. The Bill also specifies, in schedule 3, a number of irresponsible drinks promotions which are not permitted to be used in licensed premises. These include promotions which—

- relate specifically to an alcoholic drink likely to appeal largely to persons under the age of 18;
- involve the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks);
- involve the supply free of charge, or at a reduced price, of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink;
- involve the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises);
- are based on the strength of any alcohol;
- reward or encourage, or seeks to reward or encourage, drinking alcohol quickly; or
- offer alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.

393. Under the Bill, the Scottish Ministers will have powers to add, by regulation, other descriptions of drinks promotions to the list of irresponsible promotions.
Differential pricing policy

394. The Committee notes the Executive’s proposals to prevent promotions which could encourage binge drinking, through the use of a differential pricing policy.

395. The proposal was generally welcomed by most of the witnesses who gave evidence to the Committee, including organisations representing the drinks industry. The National Union of Students (Scotland) however had some reservations over the proposed policy—

‘We welcome coming down on irresponsible drinks promotions, particularly when they encourage young people and students—or, indeed, anybody—to drink a large amount of alcohol in a short time, but we do not wish to see new laws that unfairly penalise student associations in favour of big pub chains or nightclubs. For example, for a nightclub that opens only between 10 pm and 2 am, the 48-hour rule represents a short period of time. It is easy to target a student market in those two days. In most cases, student associations are open from 8 or 9 in the morning until 1 or 2 in the morning. A nightclub can afford to have a two-day promotion and can target the student market because it will make up the money at the weekend, whereas a student association cannot afford to do that.’

396. This position was supported by the Royal College of Nursing—

‘[…] the proposal to have a 48-hour minimum pricing policy is a step in the right direction; however, we would like that to be extended, if possible, because it would not necessarily prevent the trade from having nights and days during the week on which alcohol is sold cheap to students, for instance.[…]’

397. Alcohol Focus Scotland had other concerns—

‘We have concerns about the 48-hour rule. What will happen in that period? Will outlets be able to sell alcohol at extremely low prices? Is such an approach acceptable in tackling excessive drinking? Will that 48-hour period be followed by a 10-hour period followed by another 48-hour period? That would be no real change at all.’

398. A number of witnesses called for an alternative set of proposals based on minimum pricing. Belhaven Group plc, for example, argued—

‘We understand that the OFT has not ruled out the possibility of minimum pricing conditions and, if that is the case, we would recommend that minimum pricing is a better and clearer alternative to the provisions of the Bill as it currently stands. It doesn’t make sense to Belhaven that an operator selling alcoholic drinks at say 99 pence per unit would comply with the existing Bill whereas an operator who drops his price from £2.50 to £2.00 for the same alcoholic unit, for a period of say six hours, would be in breach of the terms of the Bill. Minimum prices should not be completely arbitrary but
rather established under a formula which could be for example – not more than 25% under average prices in establishments of similar type and not higher than 10% below the average of prices in establishments of similar type within any given locality. For example, if the average price of a pint of lager is £2.00, the minimum price should be within the range £1.50 to £1.80.\textsuperscript{150}

399. The Scotch Whisky Association, on the other hand, argued strongly against a minimum price fixing scheme—

‘The industry welcomes the decision to introduce a non-differential pricing approach rather than minimum pricing for alcoholic drinks. Minimum pricing would have raised serious competition law concerns and is potentially discriminatory. A non-differential approach is less intrusive and, properly applied, should assist in tackling harmful drinking patterns.’\textsuperscript{151}

400. The Committee noted that a minimum pricing scheme operated by the local licensing board in Aberdeen had been successfully challenged in the Court of Session, and that following the Court ruling, a similar scheme which had been operating in Perth and Kinross was withdrawn.

401. The Committee questioned the Deputy Minister on this issue—

‘My mind was genuinely open on how best to tackle irresponsible promotions. We had to take advice on competition law and legal precedents on minimum pricing, in relation to one local authority area in particular. […] Because of that, we are not advocating to the Parliament that we go down the minimum pricing route. We do not think that it could be defended if it were challenged. That is why we have adopted our present approach on irresponsible promotions.’\textsuperscript{152}

402. Executive officials offered further explanation of why the minimum pricing route had been rejected—

‘It is felt that minimum pricing is a fairly invasive approach, as it requires individual licensing boards to set prices for a tariff of drinks, which would lead to a lot of variation throughout the country. It was felt that non-differential pricing avoided that, was less invasive and could be applied across the board. It would be difficult to impose minimum pricing in members clubs, for example. Because they traditionally impose lower prices, we would almost have to allow separate tariffs for each club or for clubs in general, whereas non-differential pricing can be imposed across the board without running into some of those difficulties.’\textsuperscript{153}

403. \textbf{The Committee concludes that the proposed differential pricing policy is an appropriate measure which should help to reduce the incidence of binge drinking in on-sales premises.}\textsuperscript{154} However, the Committee notes that

\textsuperscript{150} Belhaven PLC, written submission to Local Government and Transport Committee
\textsuperscript{151} Scotch Whisky Association, written submission to Local Government and Transport Committee
\textsuperscript{152} OR Col 2572
\textsuperscript{153} OR Col 2573
\textsuperscript{154} David Davidson reserved his position in relation to the differential pricing policy.
some organisations which gave evidence during Stage 1 suggested a longer period of price list maintenance of up to 72 hours, whilst others have suggested that prices should be maintained for a set number of hours of opening rather than a fixed period. The Committee therefore asks the Executive to provide further information on why it chose 48 hours for the price maintenance requirement, and what evidence it considered in arriving at the decision.

Irresponsible drinks promotions in the off-sales sector

404. Many witnesses who gave evidence to the Committee were not happy that the proposals in relation to irresponsible drinks promotions applied only to on-licence premises. The SLTA for example argued—

‘It is not right that one section of the trade is outwith the jurisdiction of the bill. The situation should be the same for everyone. Only one thing binds together the trade, from massive supermarkets to small corner shops and pubs: the licence. Every part of the trade should be under the same jurisdiction as the on-trade. The on-trade has shouted about the need to do something in law to stop promotions, but it seems that we have been targeted.

No one could say that there are no problems in the off-trade. Given that such problems exist, it is amazing that off-sales seem to be outwith the scope of the package of measures. […]’

405. This position was broadly supported by many other witnesses including Barnardos, Highland Council, the Bar, Entertainment and Dance Association (BEDA), Diageo, Scottish Association of Alcohol Action Teams (SAAAT), South Ayrshire Council, the Scottish Beer and Pub Association and the Scotch Whisky Association.

406. Not surprisingly, however, representatives of the off-sales retail sector argued that there were important differences which meant that the on and off-sales sectors should indeed be treated differently. The Portman Group argued—

‘The Portman Group distinguishes between the on-trade and the off-trade when it comes to promotions. It is necessary to regard such promotions in the on-trade a little bit differently because any alcohol that is purchased is for immediate consumption. If a promotion is run in the off-trade, we can be sure that it will affect purchasing patterns, but it will not necessarily impact on drinking patterns, whereas if a promotion is run in the on-trade, if it affects purchasing patterns, it will almost inevitably affect drinking patterns. That is why we would say that there is more concern about promotions in the on-trade than in the off-trade.’

407. The Scottish Grocers’ Federation, in its written submission said—

‘We understand the Scottish Executive Licensing Team is commissioning research into the effects of off-trade promotions. We believe that the Scottish

155 OR Col 2265
156 OR Col 2283
Executive should resist all attempts to control the way we promote and market the goods on our shelves. We believe that Promotion is the mainstay of the retail offer and as such it differentiates one retailer from another. It would be contrary to the operation of a free market in retailing for controls to be placed on consumer offers. We totally refute any suggestion from other sectors that the problem of excess consumption is due to off-licence promotions. [...] It is not the case as suggested in previous evidence that consumers are intoxicating themselves with liquor purchased from the off-licence prior to entering public houses and nightclubs.157

408. The Committee questioned the Deputy Minister and his officials on the decision not to include the off-sales trade within the provisions relating to irresponsible drinks promotions. Responding to questions from members, the Deputy Minister indicated—

‘The position on off-sales is clear. At the moment, we struggle to restrict irresponsible promotions in off-sales as opposed to on-sales simply because of the lack of evidence for a direct link between off-sales purchases and binge drinking, which it is a core policy objective of the bill to address. I have asked, and will continue to ask, a number of bodies to provide us with evidence on that—if the committee can help us in that regard, so much the better. I make it clear that we retain the powers to act on that matter and, if evidence of the link is forthcoming, we will act on it. I hope that the convener would expect us to have an evidence base on that. We need such an evidence base; it is helpful to have one.’158

409. The Committee notes representations which have been made on this issue from both the on and off-sales trade and from other organisations with an interest.

410. The Committee shares the concerns that, at present, the Bill does little to address aspects of binge-drinking and other anti-social behaviour in which the alcohol involved may have been purchased from an off-licence or other off-sales outlet through the use of an irresponsible drinks promotion.

411. However, the Committee accepts that there are differences between the on and off trades, and it is perhaps too simplistic to apply exactly the same measures to both sectors. The Committee also notes that sound evidence would be required in order to justify an intervention in the commercial market operation of the off-sales trade.

412. The Committee also notes that the Executive is awaiting the findings of a study currently being carried out by the Scottish Association of Alcohol Action Teams, before deciding whether to commission further research in this area.

413. Finally, the Committee notes that the Bill proposes powers which would enable ministers to extend the licence conditions from on-sales to off-sales

157 Scottish Grocers’ Federation, written submission to Local Government and Transport Committee
158 OR Col 2574
should they decide that it is appropriate to do so, and that it is proposed that this is done through the affirmative procedure for subordinate legislation.

414. The Committee notes the position but feels that more could have been done to produce evidence in relation to off-sales in time to inform parliamentary scrutiny of the Bill. Nevertheless, the Committee sees no reason why some of the seven measures set out in schedule 3 of the Bill—for example those relating to drinks likely to appeal to under 18s and those based on the strength of the alcohol—could not, with appropriate adjustment, be extended to the off-sales trade in the meantime. The Committee would also ask the Minister to ensure that any future draft subordinate legislation is placed before the Committee in advance of it beginning its formal parliamentary process.

Dial a drink

415. The Committee noted that in certain parts of Scotland it is possible to order alcohol for delivery in a way similar to the way in which take-away food is delivered to the consumer. It is understood that police in some areas are concerned that checks on the age of the people receiving the delivery may not be rigorous enough, or indeed may not happen at all.

416. The Committee raised this issue with the Deputy Minister. He indicated—

‘[…] It is a worrying issue, […] The problem is finding a mechanism in law to deal with it. […] If a 17-year-old answers the door when a case of whatever is being delivered, where does the onus of responsibility lie? We have given considerable thought to the matter but, to be frank, we have not yet come up with a solution. […] Our lawyers have been poring over the problem, but it has not proved easy to solve.’

417. The Executive officials provided further information—

‘We would like to discuss the matter with the police. In the bill, we have tried to go some way towards tackling dial-a-drink issues by preventing people from delivering alcohol between midnight and 6 am specifically because of those problems. However, we need to consider the proof issues in more detail. Enforceability is a major issue for us, as it is for ACPOS. […] That is something that we need to look at; we just do not know whether we can find a workable, practical solution.’

418. The Committee welcomes the proposal in the Bill to prevent alcohol being delivered between midnight and 6am, but is agreed that more may need to be done to ensure that adequate age checks are made by delivery workers. The Committee acknowledges that it may be difficult to find a workable solution to this problem but nevertheless calls on the Executive to consider, following discussions with the police, whether there are workable ways in which the Bill can be amended to ensure that under-age people are not able to use dial-a-drink services.

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159 OR Col 2569
160 OR Col 2570
Proof of age
419. The Committee welcomes the provisions in the Bill in relation to sale of alcohol to young persons, and notes that the Bill, if passed, will require young people wishing to purchase alcohol to verify that they are aged 18 or over by producing a passport, driving licence or such other document as may be specified.

420. The Committee received a written submission from Young Scot, the National Youth Information Agency for Scotland. Young Scot welcomes many aspects of the Bill in relation to the role of and protection of young people. The Committee notes that Young Scot is currently the accredited card issuer for the Proof of Age Standards Scheme (PASS), which was established by the British Retail Consortium with the support of the Home Office in 2003. This function is carried out in conjunction with local authorities through the Dialogue Youth initiative.

Labelling and advertising of alcohol
421. The Committee questioned the Deputy Minister on the advertising and labelling of alcohol, and how it is displayed in supermarkets and other shops. The Deputy Minister confirmed that these matters are reserved—

‘Labelling and advertising are reserved matters—I am sorry if that is a wee bit of a cop-out—but […] I discuss those issues with my ministerial colleagues in the Health Department. During the process that led up to where the bill is now, we sought to build stronger professional relationships with the industry in order to encourage it to consider such matters, but the formal position is that those matters are pursued by members of Parliament in London to achieve consistency throughout the United Kingdom. We do what we can in that area and can respond positively on the issue of shelf displays.’\(^{161}\)

422. On the question of shelf displays, the Deputy Minister noted—

‘[…] There can be a discretionary national licence condition. I will take on board what the committee says about that and I hope that we can respond positively to Mr Sheridan's question.’\(^{162}\)

423. The Committee notes the details provided by the Scottish Retail Consortium concerning guidance for retailers on responsible retailing of alcohol developed by the British Retail Consortium in collaboration with the Association of Convenience Stores and the Wine and Spirits Association. This guidance is also supported by the Scottish Grocers’ Federation, the British Institute of Innkeepers, the National Federation of Retail Newsagents and the Northern Ireland Independent Retailers Trade Association. The Scottish Retail Consortium asks the Committee to consider recommending that the guidance be used by the forthcoming National Licensing Forum as official guidance to be issued to licensing boards with regard to off-sales premises.

424. The Committee notes that advertising and labelling of alcohol are reserved matters, but calls on the Executive to enter into discussions with their Westminster, and, if appropriate, European Commission colleagues, to

\(^{161}\text{OR Col 2581}\)
\(^{162}\text{Ibid.}\)
determine whether it is necessary to seek any changes in relation to these matters across the whole of the UK.

425. The Committee commends the British Retail Consortium guidance and recommends that the Scottish Executive asks the National Licensing Forum to have regard to it in developing its future guidance to the off-sales sector.

**Test purchasing of alcohol by young people**

426. The Committee noted that currently it is difficult for the police to find evidence of licensees illegally supplying alcohol to persons under 18. 'Test Purchasing', may be routinely used, for example, to gain evidence of retailers selling tobacco products to young people under 16, because it is the sale by the retailer, rather than the purchase which is the illegal act. In the case of alcohol however, purchase by a person under 18 is also a criminal offence, and police would not be prepared to ask young people to commit such a criminal act.

427. The Committee questioned both the Scottish Executive officials and the Deputy Minister on this issue. Officials told the Committee—

> ‘That issue is really for the Lord Advocate. He has considered the matter and there was a successful pilot on tobacco, on which he made an announcement recently. The pilot is not being extended to alcohol at the moment but there is an agreement to consider it again and consult the various stakeholders, including the police, to decide whether it can be used.’

428. The Deputy Minister reported—

> ‘I have discussed the matter with the Lord Advocate, as it is his decision. By definition, there are issues about the danger of criminalising children—or the perception of doing that—and he has asked for further evidence before he makes a final decision on the matter. That is all that I can say at the moment, but the point is being actively considered.’

429. In a news release by the Scottish Executive dated 25 February 2005, the Lord Advocate is quoted as saying—

> ‘I have asked my officials in the Crown Office and Procurator Fiscal Service to carefully examine the issues around test purchasing of alcohol by young people, and have maintained my position on this meantime.’

430. The Committee notes the complex issues surrounding test purchasing and young people, but nevertheless is hopeful that the difficulties facing police in utilising test purchasing as one of the options in assembling evidence against retailers suspected of selling alcohol illegally to young people can be overcome. The Committee therefore looks forward to hearing the Lord Advocate’s views in due course.

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163 OR Col 2198
164 OR Col 2569
165 Scottish Executive News Release
http://www.scotland.gov.uk/News/Releases/2005/02/24160306
431. The Committee notes the report of the Subordinate Legislation Committee. The Committee asks the Scottish Executive to consider the recommendations of the Subordinate Legislation Committee and where appropriate, bring forward amendments at Stage 2.

POLICY MEMORANDUM

432. The Committee notes the contents of the Bill’s Policy Memorandum, and accepts that it provides adequate explanation of the policy intentions behind the Bill.

FINANCIAL MEMORANDUM

433. The Committee notes the contents of the Financial Memorandum.

434. Although the new licensing system is intended by the Executive to be self-financing, it is difficult for the Committee to assess whether this will indeed be the case as many of the details provided in the Financial Memorandum appear to be rather sketchy. Details of the fees regime, for example, have not yet been developed, and the cost of the Licensing Standards Officers is very difficult to determine when all that is known is that between 32 and 66 will be required, at a salary of £15,000 - £30,000 (with no mention of on-costs). Whilst the Committee acknowledges that the Financial Memorandum is intended to be helpful, it considers that more robust financial details are required and as it stands the Committee is not able to determine whether the Financial Memorandum is adequate.

CONCLUSION

435. The Committee has conducted, during Stage 1, a detailed examination of the Bill and has taken a large volume of both oral and written evidence to inform its consideration of the general principles.

436. The Committee has found there to be broad consensus both across the political parties and the key stakeholders within the industry and local government on the need for modernisation of the system, and for the licensing objectives which underpin the Bill.

437. The report has highlighted a number of areas where the Committee feels that further consideration is needed, or where the Bill could be improved or extended. The Committee looks forward to hearing the Scottish Executive’s proposals for further improvement of the Bill, if its general principles are agreed by the Parliament.

438. Subject to the caveats above, the Committee recommends to the Parliament that the general principles of the Licensing (Scotland) Bill be approved.
ANNEXE A: REPORTS FROM OTHER COMMITTEES

REPORT FROM THE JUSTICE 1 COMMITTEE

The Committee reports to the Local Government and Transport Committee as follows—

INTRODUCTION

1. The Licensing (Scotland) Bill (SP Bill 37) was introduced on 28 February 2005. On 2 March 2005 the Parliament designated the Local Government and Transport Committee as lead Committee and agreed that the Justice 2 Committee be a secondary committee.

2. The Justice 2 Committee has considered the general principles of the Bill as they relate to matters which fall within its remit. All oral and associated written evidence provided to the Justice 2 Committee is included at Annex B.

Consultation and Background to the Bill

3. The introduction of the Bill follows on from a considerable period of consultation including the Committee on Liquor Licensing Law in Scotland (the Nicholson Committee), a Working Group on off-sales, an Expert Reference Group and two Executive consultations.

4. The Policy Memorandum to the Bill states that the aims of the Bill are to:
   - Simplify and modernise the existing legislation;
   - 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.

EVIDENCE TAKEN BY THE COMMITTEE

5. The Committee agreed to focus its attention on the elements of the Bill which were most closely related to its remit, primarily preventing crime and disorder and securing public safety. On 22 March the Committee took evidence from the Convener of the Glasgow City Council Licensing Board and also took informal evidence from community police officers on their experience of policing the current licensing regime. In addition members of the Committee accompanied police officers and licensing officers in Edinburgh, Glasgow, Dumbarton and Dingwall as they undertook their duties on a Friday night.

6. The Committee also agreed to seek views from a range of stakeholders including licensing boards, the Law Society of Scotland and representatives of the licensing trade, retail sector and young people. In total the Committee received 29 written submissions of which 26 were submitted by Licensing Boards. The Committee wishes to thank those who contributed evidence or facilitated visits.

ISSUES CONSIDERED BY THE COMMITTEE

7. The Bill is divided into 9 Parts, which include the ‘core’ provisions and objectives of the Bill, the establishment of the new licensing regime, the control of order, and offences. The Committee’s evidence and conclusions are set out below in the order in which issues appear in the Bill. The Committee was not in the time available able to take comprehensive evidence on the Bill. We have therefore in general set out our recommendations as suggestions to the lead committee for areas to explore with the Minister.
Part 1 of the Bill – Core Provisions

8. Part 1 of the Bill establishes the ‘core provisions’ of the Bill, setting out rules in relation to the unlicensed sale of alcohol, defining alcohol and establishing the licensing objectives under the proposed new licensing regime which are:

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

9. The evidence to the Committee from community police officers indicated that while improvements have been made over the years, the current regime requires reform before these objectives can be met. Officers estimated that in some areas up to 60 – 70% of their workload at key times, such as pub closing time, can be alcohol related. Consumption of large volumes of alcohol can manifest itself in crime and disorder such as increased vandalism, domestic violence and drink driving. Drink driving is particularly an issue for rural forces, with police cover being thinly stretched over a wide geographical area.

10. Officers also noted the public nuisance issues associated with the high numbers of people leaving licensed premises at once, congregating outside pubs, at taxi ranks and around fast food outlets. This causes particular problems in residential or mixed use areas.

11. The evidence to this Committee was generally supportive of the objectives and framework put in place by Part 1 of the Bill.

Part 2 of the Bill – Licensing Boards, Local Licensing Forums and Licensing Standards

Officers

Licensing Boards

12. Licensing Boards in Scotland were established under Section 1 of the Licensing (Scotland) Act 1976 which requires that there is at least one Licensing Board for each local authority area. The Bill retains Licensing Boards and places a new duty on them to publish a policy statement about their licensing functions every three years. This statement will be required to promote the five licensing objectives.

13. Evidence to the Committee suggested that the current system of licensing boards required reform. Anecdotal evidence from community police officers indicated that the system was seen as inflexible and in need of modernisation. It was also suggested that the current procedure for lodging objections is too complex, too intimidating for objectors, and too difficult for communities to get involved in.

14. Schedule One of the Bill sets out further details on the rules of membership, election of members, tenure of office, training of members and a range of other procedural matters relating to Licensing Boards. The Schedule provides that a Board will comprise not fewer than five and no more than 10 councillors from the relevant local authority with a quorum of three members.

15. We note the evidence from Councillor Macdiarmid, the Convener of the City of Glasgow Licensing Board, that the Bill may be overly prescriptive in terms of the size and quorum of Licensing Boards. Glasgow’s current board has 20 members and a quorum of 10 and Councillor Macdiarmid felt strongly that the Bill should avoid a “one-size-fits-all” model.¹

16. We recommend that the lead committee explores with the Minister the scope for greater flexibility about the size and the quorum of Licensing Boards.

¹ Official Report, 22 March 2005, column 1453
17. The Committee wrote to every Licensing Board, requesting a number of details, such as the number of licences in force, the number of complaints received and the number of suspensions imposed and warnings issued. In addition, the Committee sought information regarding the number of appeals made against the decisions of Boards. Of the 32 Licensing Boards, 25 responded. The Committee was not able to gain a comprehensive overview of the current situation, due to discrepancies, omissions and inconsistencies in the format and nature of the information provided by the Boards. However, the Committee was able to receive a general impression of the effectiveness and responsiveness of the current regime and the extent to which current sanctions are routinely applied by Boards.

18. The number of formal complaints received by Boards was low relative to the number of licences in force. Many Boards reported less than 10 complaints per annum in the past 5 years. Where complaints were received, suspensions and warnings did not appear to be routinely used and, where suspensions had been imposed, appeals were relatively frequently made and often upheld. Community police officers noted that there was a perception that serious action would not be taken except in extreme cases and that licensees did not appear to view losing their licence as a serious threat. The proposals in the Bill were viewed as a welcome improvement on the current situation. It was suggested that warnings and penalties with an adverse financial effect, such as restricted opening hours, may be an effective means of ensuring compliance with the objectives of the Bill. A robust approach to the enforcement of the Bill will also need to be taken, both by police and by the Boards themselves, in order to ensure maximum benefits.

19. The Committee was concerned at the inability to gain a consistent picture of how Licensing Boards currently operate, and was surprised at the apparently low level of sanctions imposed under the current regime. We draw the attention of the lead committee to the evidence received from Licensing Boards in this respect. We recommend that the lead committee explores with the Minister the desirability of Licensing Boards collating their data in a consistent form and whether and how the new regime will lead to more robust enforcement including the full and appropriate use of all the available sanctions.

Local Licensing Forums
20. The Bill provides for the establishment of Local Licensing Forums (LLFs), in line with the recommendation of the Nicholson Committee. The LLF is required to keep the operation of the Act in its area under review with particular regard to how the relevant Board exercises its functions. Boards must have regard to the views of the LLF and where a Board decides not to follow the advice or recommendations of the LLF it must give its reasons for not doing so.

21. LLF’s are to have between five and 10 members appointed by the relevant local authority. The Licensing Standards Officer for the relevant area is to be a member, whilst the remaining membership is to consist of representative interests or persons who have an interest in the LLF’s functions.

22. The creation of the LLFs was welcomed by community police officers as one way of encouraging boards to be more responsive and accountable to their local communities, and to allow more community input. It was noted that community councils had performed a useful role in this regard and that this work could be built upon.

23. Councillor Macdiarmid had similar concerns to those he raised about licensing boards. He pointed out that Glasgow’s current local forum has 36 members and that this has enabled them to include a wide range of interests and to achieve some very effective collegiate working. Glasgow would welcome greater flexibility in the membership of forums.²

24. We welcome the introduction of Local Licensing Forums but recommend that the lead Committee explores with the Minister whether there could be more flexibility about their size and composition. We further recommend that the lead committee should explore the extent to which the forums will make the licensing process more accessible to communities and allow for greater community involvement in the process.

² Official Report, 22 March 2005, column 1458-9
Licensing Standards Officers

25. The Bill requires local authorities to appoint at least one LSO for their area. Section 14 of the Bill sets out the functions of LSOs, which are threefold: to provide information and guidance about the operation of the Bill; to supervise holders of premises and occasional licences to ensure that they comply with the conditions of their licence; and to provide mediation services with the aim of avoiding or resolving disputes between licence holders and any other parties.

26. Where a licence has been breached, officers may issue a notice requiring remedial action to be taken. Where this does not occur they may apply to the Licensing Board to review the relevant licence. The Bill also confers powers of entry and inspection on LSOs to enter any licensed premises.

27. Community police officers generally welcomed the proposal to establish LSOs. In many areas police currently perform this role, going into licensed premises and carrying out a liaison role. It was felt that LSOs would be a useful source of information, helping police to build up a more comprehensive picture of the activities on licensed premises, thereby leading to better enforcement.

28. The Law Society has suggested that LSOs should be a national rather than a local service, funded by the Scottish Executive (with some costs met through fees) and centrally organised. They argue that this would “allow resources to be applied where they are required and diverted from where they are not required” and that the existence of a central team would “have the advantage of increasing the objectivity of officers and allow the team to rapidly build up experience.”

29. The Committee recommends that the lead committee clarify the specific role of LSOs (including any enforcement role) with the Minister, along with the relationship that the LSO is to have with the local police force. This Committee feels that it is vital to define whether the LSO is an administrative, policing or an enforcing presence, as the answer to this question will have resource implications. The lead Committee may also wish to pursue the Law Society’s suggestion that the LSO should be a national resource with the Minister.

Overprovision

30. Section 7 requires licensing policy statements to include a statement on the extent of overprovision in any locality within the Board’s area. A specific issue on this was raised with us by the Law Society of Scotland who suggested that the effect of this section is unclear given the absence of a definition of “locality”. They suggest that the requirement on Boards to take account in approving licences of the five key licensing objectives in section 4 may in fact adequately address the potential mischief identified in section 7.

31. Councillor Macdiarmid had some concerns about the concept of overprovision. His view was that it was important to compare similar types of license so that, for example, a supermarket was not prevented from opening simply because it could not get a licence to sell alcohol. He suggested that the definition of overprovision should be left to the local discretion of Licensing Boards. He noted the different issues arising in city and rural areas which would make national guidelines difficult to achieve. The Scottish Retail Consortium also had concerns about the issue of overprovision. They note that the White Paper suggested that overprovision should only be an issue in relation to businesses where the sale of alcohol is the main business activity; however this has not been specified in the Bill. They are concerned about the impact of this provision on businesses whose main business is the sale of groceries with alcohol sales a relatively small (though possibly significant) proportion of turnover. Their concern is that “if there are a number of off licenses in the same locality as a small grocery store then refusal of a licence could occur depriving a community of a food store and limiting consumer choice”.

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3 Law Society of Scotland, written evidence
4 Ibid
5 Official Report, 22 March 2005, column 1460
6 Scottish Retail Consortium, written evidence
32. **We recommend that the lead committee clarifies with the Minister what the requirement to assess overprovision will add to the licensing regime and what flexibility there will be in its local application.**

**Register of licences**

33. Section 9 requires each Licensing Board to keep a public register of licences and licensing decisions. The Law Society has suggested to us that the Bill provides an ideal, and possibly one-off, opportunity to introduce “a simple, central, national and easily accessible computer register of designated personal licence holders.” They suggest that such a register would “substantially reduce the bureaucratic burden on Boards and...have an important role to play in fulfilling the objectives of preventing crime and disorder and securing public safety”. This proposal was strongly supported by Councillor Macdiarmid who said that “We will run into difficulties unless we are able to access a national register that will let us know whether a person is a fit and proper person”.

34. **We recommend that the lead committee explores with the Minister whether there are any plans for a national register of personal licence holders.**

**Parts Three – Six of the Bill – Premises Licences, Occasional Licences, Licensed Hours and Personal Licences**

**Premises Licences**

35. One of the key proposals in the Bill is to replace the current system of licences with two types of licence: a premises licence and a personal licence. In addition to rationalising the current licence system, the Bill will also extend the coverage of the licensing regime. At present licensed premises include hotels, public houses, nightclubs, restaurants, cafes and off-licences. The Bill will expand the range of bodies covered by the licensing regime to potentially include private members’ clubs, trains, vessels, vehicles and moveable structures, motorway service stations, wholesalers, seamen’s canteens, and international airports and ports. Part Three of the Bill sets out the scope and functions of premises licences.

36. All premises licences will be subject to mandatory conditions which are set out in Schedule 3. Scottish Ministers may also set out in regulations further mandatory or discretionary conditions to be attached to premises licences. In addition Licensing Boards will be able to apply additional licence conditions.

37. Schedule 3 provides that the price of alcohol should not be varied for a period of less than 48 hours. This is intended to address the issue of ‘happy hours’ in licensed premises which the Bill refers to as ‘irresponsible drinks promotions’. This was welcomed by community police officers who felt that the current pricing policies and competition between premises led to people drinking more than they otherwise might. Councillor Macdiarmid also welcomed this provision which is consistent with the approach already adopted in Glasgow with, he felt, some effect.

38. One of the mandatory conditions set out in Schedule 3 will provide that no person can work in premises in a capacity which involves selling or serving alcohol unless they have completed prescribed training courses. The Scottish Retail Consortium is concerned that mandatory training may be prescribed for staff below managerial level such as cashiers. They suggest that “individual licensees are best placed to assess and meet their training needs and feel there is a responsible attitude to staff training within the retail sector. Our concerns relate to additional burden to businesses and unnecessary bureaucracy”.

39. The Scottish Retail Consortium also expressed concern about the potential for Boards to impose conditions which require the provision of separate display areas for alcohol. They suggest that there is little evidence that such conditions would promote the objectives of the Bill and that they would place a heavy burden on smaller stores in particular.

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7 Law Society of Scotland, written evidence
8 Official Report, 22 March 2005, column 1460
9 Scottish Retail Consortium, written evidence
10 Policy Memorandum, paragraph 86
40. We recommend that the lead committee should clarify with the Minister when and in what circumstances the powers under section 25(2) of the Bill would be exercised and the degree and extent of the training covered by the phrase ‘prescribed training’.

Personal Licences
41. The second component of the new licence system is the Personal Licence. The Bill requires each premises with a ‘premises licence’ to also have a designated personal licence holder on the premises who is responsible for that premises.

42. Personal licences will be valid for 10 years with the possibility of an extension for a further 10 years. Where a personal licence holder is found, following a hearing of the Licensing Board, to have contravened the licensing objectives set out in Part 1, a Licensing Board can either revoke the licence, suspend the licence for a period of not more than six months, or endorse the licence.

Occasional Licences
43. The holder of a premises licence, a personal licence or a representative of a voluntary organisation may apply to a Licensing Board for an occasional licence for up to 14 days.

Views on new licence system
44. The changes to the current system of licences were welcomed by community police officers who saw the current system as being too cumbersome, with little actual differences in how the various categories of licence are processed. In areas with high numbers of premises and many extensions it is currently difficult to enforce the legislation effectively.

Licensed Hours
45. The Bill provides that licence holders will be required to specify their proposed opening hours in the operating plan which they must submit for approval to the Licensing Board. Whilst there is a presumption in the Bill against 24 hour licences, they may be granted where the Licensing Board is satisfied that there are exceptional circumstances which justify such a licence being awarded.

46. Community police officers expressed concern to the Committee about the possible operational impacts of any extension to the current licensed hours. Many rural areas do not have 24 hour cover, and in urban areas, shifts are based around the busiest hours. In general terms, increased flexibility in opening hours was seen as having potential to make policing more difficult.

47. The Scottish Retail Consortium suggested that a different approach should be adopted to 24 hour licences for off-sales of alcohol. They argue that 24 hour licences are appropriate for responsible retail outlets where there are customer demands for this service and that existing safeguards on the retail sale of alcohol would operate regardless of the time of day.

48. The Committee recommends that the lead committee explore with the Minister what the impact of extending licensed hours would be on policing coverage throughout Scotland.

Relevant offences
49. Section 74 provides that, where a licence holder is convicted of a relevant offence, and if the Licensing Board is “satisfied that it is necessary to do so for the purposes of the crime prevention objective” (74(8)(c)), the Board may revoke, suspend or endorse the holder’s personal licence.

50. A particular issue was drawn to our attention by the Scotch Whisky Association. They are concerned that the Bill at present does nothing to address on-trade substitution of spirits, “involving the re-filling of genuine brand bottles, once empty, with cheaper inferior product or supplying cheaper, usually poor quality spirits, in response to an order for a branded product”. While this practice can currently be prosecuted, “a licensee found guilty is likely only to face a fine, and one that will be low relative to the financial return from such activities.” SWA say that it is unlikely at present that the offence would lead to suspension of the licence or be taken into account when the licence comes to be renewed.

11 Scotch Whisky Association, written evidence
51. They note that in the equivalent Westminster legislation, on-trade spirits substitution has been included as a relevant offence which can lead to licence suspension or forfeiture. They suggest that the opportunity be taken to introduce similar provisions in Scotland which would contribute to “tackling criminal activity, protecting consumers and assisting industry efforts to protect Scotch Whisky” as well as “preventing a situation arising where Scotch Whisky received better protection south of the border compared to Scotland.”

52. We recommend that the lead committee asks the Minister whether such a provision could be added to the Bill.

Part Seven – Control of Order

53. Part 7 of the Bill provides for the exclusion of violent offenders from licensed premises and the closure of licensed premises where the Board or a senior police officer is satisfied that disorder is imminent and closure is necessary for public safety.

54. These provisions of the Bill were welcomed by community police officers.

Part Eight – Offences

55. Part 8 of the Bill deals with offences relating to children and young people, drunkenness and disorderly conduct, and a range of miscellaneous offences.

Offences relating to children and young people

56. There was considerable debate during the previous consultation exercises on whether licensed premises should be required to ‘opt in’ to allow entry to children rather than ‘opting out’ of having to do so. The Bill adopts the ‘opt-in’ position. Licensees who offer an on sales service will be required (by the regulations which will govern the operating plans) to choose whether to allow access by children. This must include details within the operating plan 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.

57. For off sales, operation of a no proof no sale system would be sufficient to allow access by children. (This appears to meet the concern raised with us by the Scottish Retail Consortium).

58. Councillor Macdiarmid expressed disappointment that the Executive had not followed the “opt out” approach for access to children. His view was that the Executive’s approach “leaves the door open for those who do not want children on their premises and for those who do not want higher standards to be required of them.” He felt that problems of under-age drinking were more likely to be addressed if “all premises are of a standard that will allow them to welcome children and which will create an environment in which children and young people can learn about drinking in a family context.”

59. The Bill also sets out a number of other requirements on licensees. All licensees are 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’ of age. 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. Consumption of alcohol by a child is not an offence, except where this takes place on licensed premises, and 16 and 17 year olds may consume beer, wine, cider and sherry with a meal.

60. The Nicholson Committee recommended that a national proof of age scheme should be introduced. The considerable majority of respondents to the Scottish Executive’s consultation on

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12 Scotch Whisky Association, written evidence
13 Official Report, 22 March 2005, column 1455
14 Official Report, 22 March 2005, column 1465
the report were also in agreement with this recommendation. The Scottish Retail Consortium particularly drew our attention to this, pointing out that “Many retailers have stores throughout the United Kingdom and it would be onerous, and more importantly confusing, if differing schemes have to be accepted in different locations.”

61. SRC also raised concerns about the duty in section 101 to display a notice in a prescribed form with prescribed wording in relation to the prohibition on the sale of alcohol to under 18s. They request some flexibility in the form of wording, pointing out that “a number of our members are adopting a policy known as ‘Challenge 21’; the retailer will ask for proof of age up to the age of 21 and only serve over 18, where appropriate evidence is produced.”

62. Community police officers noted that there were particular issues associated with controlling sales to young people – especially in off-licences, as it can be hard to tell the age of young people. There are particular problems with the enforcement of the offence of purchasing alcohol for young people, as it is often very hard to get concrete evidence sufficient to lead to prosecutions. Various trials have been held throughout the country in an effort to identify patterns in how underage drinkers obtain alcohol. Councillor Macdiarmid said that both his board and Strathclyde police would welcome the extension of test purchasing to the liquor-licensing sphere.

63. The Committee recommends that the lead committee should clarify whether the concerns expressed by the Scottish Retail Consortium are valid. The Committee is very much in sympathy with the views expressed by Councillor Macdiarmid and urges the lead committee to explore the issue of test purchasing with the Minister.

Drunkenness and disorderly conduct & miscellaneous offences
64. The Bill establishes various offences in relation to drunkenness and disorderly conduct and establishes a range of other miscellaneous offences.

65. These offences were welcomed by community police officers. It was noted that measures to encourage the use of plastic bottles and glasses could also be included or encouraged by the bill, in order to reduce assaults, vandalism and public nuisance.

Part 9 – Miscellaneous and general

Appeals
66. Section 122 sets out the arrangements for appeals against Licensing Board decisions. Where a decision to revoke, vary, suspend or endorse a licence has immediate effect, and the appeal is on the basis that the decision is disproportionate, appeal is to be made by summary application to the sheriff.

67. Councillor Macdiarmid strongly welcomed the scope for action to be taken on licences pending appeal. He noted that at present there was a major problem of public perception if a licence was suspended but no action was taken pending appeal.

68. The Law Society has raised concerns with us about this provision. They point out that if the sanction is already in place, use of summary application procedure may lead to unacceptable delays; and if the sanction is only for a short time, it may have ended before the appeal takes place. The Law Society prefers the approach originally suggested by the Nicholson Committee and endorsed by the Working Group on Off-sales in the Community. This would provide for an early interim hearing before the Sheriff on the single issue of whether the sanction should be placed in abeyance until the Sheriff Principal could determine the appeal on its merits.

15 Scottish Retail Consortium, written evidence
16 Ibid
17 Official Report, 22 March 2005, column 1453-4
18 Official Report, 22 March 2005, column 1454
19 Law Society of Scotland, written evidence
69. The Committee has sympathy with the conclusions outlined by the Nicholson Committee and recommends that the lead committee explores this issue further with the Minister.

_Inspection of premises before grant of licence_

70. Section 128 provides that a constable or LSO may inspect premises before granting or varying a licence. Subsection (4) provides that such a person “may if necessary use reasonable force”.

71. The Law Society has suggested to us that this provision is unnecessary on the basis that, “if premises cannot be inspected before the grant of a licence then the licence should not be granted”.\(^\text{20}\)

72. The Committee is unclear as to the need for subsection (4) of section 128, and recommends that the lead committee should seek clarification on when this power would be used.

_Police powers of entry_

73. Section 129 provides that a constable may at any time enter and inspect any licensed premises. A constable may also enter any premises on which food and drink is sold for consumption on the premises if the constable has reasonable grounds for believing that alcohol is being sold on the premises illegally. This power can only be exercised with written authority from a justice of the peace or from a constable of or above the rank of inspector. The Law Society has pointed out that this power can be exercised within a period of 8 days and that therefore “there would appear to be no sense of urgency attached to such powers”. They question, therefore, why an application to the sheriff is not required for the exercise of this power.”\(^\text{21}\)

74. The Committee considers that the power introduced by section 129 is reasonable.

_Conclusion_

75. The Committee recommends that the Parliament agrees to the general principles of the Licensing (Scotland) Bill.

\(^{20}\) Ibid
\(^{21}\) Ibid
REPORT FROM THE SUBORDINATE LEGISLATION COMMITTEE

The Committee reports to the Parliament as follows—

Introduction

1. At its meetings on 17 and 24 May 2005, the Subordinate Legislation Committee considered the delegated powers provisions in the Licensing (Scotland) Bill at stage 1. The Committee submits this report to the Local Government and Transport Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided a memorandum on the delegated powers provisions in the Bill, which is reproduced at Annex 1.

3. The Committee’s correspondence to the Executive and the Executive’s response to points raised are reproduced at Annex 2.

Delegated Powers Provisions

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections 6(7)(a), 9(2), 13(4), 19(2)(b)(ii), 19(4), 20(6), 21(2)(a), 24(1)(a)(i), 24(1)(b), 24(2)(f), 25(2), 25(3), 27(6)(d), 32(1), 52(c), 53(7)(a), 53(8)(h), 55(2)(a), 57(2), 57(3), 67(1), 67(2)(e), 78(1), 80(7), 82(1), 82(2), 93(4)(c), 101(3), 116(1)(a), 116(1)(b), 117(1), 117(4), 120(1), 123(8), 124(2), 124(3)(a), 125(1), 127(1), 135, 140(2), schedule 1 paragraph 11(1), schedule 1 paragraph 12(4) and 12(5) and schedule 3 paragraph 6(1).

Section 25(2) Power to amend schedule 3

5. The Committee noted that the Executive has undertaken to amend the Bill at stage 2 so that the power at section 25(2), to amend the mandatory conditions set out in schedule 3, will be subject to draft affirmative procedure. Although the Executive does not mention the power at section 57(2), the Committee assumed that it will presumably make the same change in respect of that power. The Committee agreed to follow-up on this undertaking by the Executive and brings it to the attention of the lead committee.

Section 81(1) Power to specify which Licensing Board is to exercise functions under Part 6

6. The Committee noted that section 81(1) gives Scottish Ministers power, by order, to provide for any function exercisable by a Licensing Board under Part 6 of the Bill to be exercisable instead by a Licensing Board of such other description as may be specified in the order. Subsection (2) provides that such an order may modify the Act and make different provision in relation to different functions.

7. The Committee considered that it was not clear why it would be necessary for the Executive to take a power to modify any part of the Act to achieve this aim. The Committee considered that if the power was an administrative convenience to allow that the Licensing Board exercising functions in relation to a personal licence should not be the Board to whom the applicant applies under section 63, this could be achieved without modifying the Act. The Committee was also concerned that the proposed power conferred by section 81(2) is not subject to affirmative procedure.

8. The Committee therefore asked the Executive for explanation of the need for the power at section 81(2) to modify the Act, why it is not subject to draft affirmative procedure, and whether the Executive considered that the policy aim could be achieved by an order under section 135, which allows for incidental or consequential provision necessary or expedient for the purposes of the Act.

9. The Executive responded by stating that it considered it appropriate to reflect any determination under section 81(1), to specify where a Licensing board should carry out the functions of another Licensing Board, in the text of the legislation itself, and that this is the
justification for the power being taken at subsection (2)(a). The Executive also explained that negative procedure was chosen as the powers taken were not to modify or change the functions carried out under Part 6 of the bill, but concerned who should undertake the function. The Executive did not consider it appropriate to use the power at section 135.

10. The Committee was content that the Executive had provided sufficient clarification in relation to this power and the procedure chosen.

Section 91 Regulations as to closure orders

11. The Committee drew the Executive’s attention to an ambiguity in the drafting of section 91(a). The introductory part of section 91 provides that 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 such orders, including, in particular, provision as set out in paragraphs (a) to (c). This suggests that the types of provision listed at paragraphs (a) to (c) may be made only in relation to closure orders. Paragraphs (a) and (b), however, refer to applications and notices “under this Part”.

12. The Executive has acknowledged this ambiguity and has undertaken to bring forward correcting amendments at Stage 2. The Committee agreed to report the Executive’s undertaking to bring forward amendments at Stage 2 to the lead Committee and the Parliament.

13. The Committee was also concerned that the question of whether on not Licensing Boards hold hearings before making closure orders was being left to subordinate legislation. The Executive explained that they would be bringing forward a Stage 2 amendment which will set out all rights of appeal. It considered that section 91(c) only concerns whether a board must have a formal hearing to consider applications for closure.

14. The Committee welcomes the Executive’s response in relation to lodging a Stage 2 amendment, but could not comment on whether its concerns would be addressed without sight of the Executive’s proposed amendments to address the areas of concern of the Committee. The Committee acknowledged that it would have an opportunity to consider this issue further when it receives the Executive’s delegated powers memorandum at Stage 2.

Section 115(3)(b)

15. The Committee noted that this power amends an order-making power at section 8 of the Roads (Scotland) Act 1984, which allows for amendment of a schedule to that Act. The Committee queried whether it was necessary to modify the order-making power in section 8 of the Roads (Scotland) Act 1984, given the power at section 115(5) to modify the definition of “excluded premises”.

16. The Executive responded that while it could be argued that section 115(5) could be used to make any necessary changes to the meaning of “class 1” in subsection (2)(a), it considered that it would be more convenient that changes be made at the same time, and in the same instrument, as an order under the 1984 Act. The Executive also pointed out that, as it intends to change the procedure applicable to orders under subsection (5) to draft affirmative, provision under that subsection could not be contained in an order also made under section 8 of the 1984 Act, as they would be subject to different procedures.

17. The Committee was satisfied with the response from the Executive.

Sections 115(5) Power to modify the definition of “excluded premises”

18. The Committee noted that this is a Henry VIII power, which would allow amendment of section 115(2) of the Bill. As this is a power to amend the definition of “excluded premises” the Committee considered that it is effectively a power to widen or narrow the practical application of the Bill. The Committee noted that there is nothing in the power to restrict its application to
premises connected with roads or the motor trade. For this reason, the Committee considered that affirmative procedure would be more appropriate.

19. In its response, the Executive agreed with the Committee’s observations that this Henry VIII power should be subject to draft affirmative procedure, and stated that it will bring forward amendments at Stage 2 to achieve this.

20. **The Committee welcomes the Executive’s undertaking to bring forward amendments at Stage 2, and brings this to the attention of the lead committee.**

Section 130  Remote sales of alcohol

21. The Committee recognised that the supply of alcohol from outwith Scotland may present certain difficulties in relation to the licensing regime within Scotland. However, the Committee noted that the power at subsection (3) is very wide. In addition, subsection (4) means that the regulations may amend and disapply provisions of the Act, making it a “Henry VIII” power. The Committee would normally argue that such a wide power should be subject to affirmative procedure.

22. The Executive agreed that the power at section 130(4)(a) to modify the Act should be subject to draft affirmative procedure, and will bring forward the necessary amendments at Stage 2.

23. **The Committee agreed to report the Executive’s undertaking to bring forward amendments at Stage 2, and brings this to the attention of the lead committee.**

Schedule 3, paragraph 8(4) and Schedule 4, paragraph 7(4)

24. The Committee asked the Executive for an explanation of its choice of negative procedure for the Henry VIII powers which would be used to modify lists of irresponsible drinks promotions set out in schedules 3 and 4 to the Bill.

25. The Executive responded that it considered that amendments to these lists, which set out descriptions of drinks promotions, are not the type of legislative change which require affirmative procedure. Furthermore, it argued that the lists may require to be amended quickly, which would make affirmative procedure inappropriate.

26. **The Committee found the Executive’s argument to be persuasive and agreed that negative procedure would be most appropriate for these powers.**

Consultation

27. The Committee noted that extensive consultation has already taken place on the issues addressed by the Bill. It acknowledged that consultation will take place on “all regulations under the Bill” and that Licensing Boards and the licensed trade will be consulted before licensing conditions are finalised. The Committee, however, questioned why it has not put a consultation requirement on the face of the bill.

28. In its response, the Executive advised that the whole legislative process in relation to this Bill had been characterised at all stages with extensive consultation, and that it would be unnecessary to include an express consultation requirement on the face of the Bill.

29. **The Committee was content with the Executive’s response on this point.**
ANNEX 1

Licensing (Scotland) Bill

Memorandum to the Subordinate Legislation Committee

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”;

3. - 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”.

4. 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 licensing hours regime which replaces the concept of “permitted hours” under the Licensing (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.
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.
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” (e.g. 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.
ANNEX 2

On 17 May 2005, the Committee asked the Executive for further explanation of the following matters:

Section 81(2): power to specify which Licensing Board is to exercise functions under Part 6

The Committee noted that section 81(1) gives Scottish Ministers power, by order, to provide for any function exercisable by a Licensing Board under Part 6 of the Bill to be exercisable instead by a Licensing Board of such other description as may be specified in the order. Subsection (2) provides that such an order may modify the Act and make different provision in relation to different functions. The Committee considered that it was not clear why it would be necessary for the Executive to take a power to modify any part of the Act to achieve this aim.

The Committee was also concerned that the proposed power to modify the Act, conferred by section 81(2) is not subject to affirmative procedure.

Therefore, the Committee seeks explanation from the Executive as to the need for this power, why the power is not subject to draft affirmative procedure, and whether the Executive considers that the policy aim could be achieved by an order under section 135.

Section 91:
Regulations as to closure orders

The Committee considered that there was some ambiguity in the drafting of section 91(a). The introductory part of section 91 provides that 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 such orders, including, in particular, provision as set out in paragraphs (a) to (c). This suggests that the types of provision listed at paragraphs (a) to (c) may be made only in relation to closure orders. Paragraphs (a) and (b), however, refer to applications and notices “under this Part”. It is not clear, therefore, whether the power at section 91 is exercisable in relation to applications or notices under Part 7, which are not connected with closure orders (for example an application for an exclusion order under section 85(3)). The Executive is asked for an explanation of the purpose of this provision.

The Committee noted that section 91(c) allows regulations to make provision for the holding of hearings by Licensing Boards before making closure orders or extensions to them. As the hearings are not referred to elsewhere, it appeared to the Committee that the Executive is leaving the question as to whether such hearings should take place to subordinate legislation. The Committee was concerned that the existence or otherwise of this right of appeal was being left to subordinate legislation and asks the Executive for its comments.

Section 115(3)(b):
Excluded premises

The Committee noted that this power amends an order-making power at section 8 of the Roads (Scotland) Act 1984, which allows for amendment of a schedule to that Act.

The Committee questioned whether this power is necessary, as the power at section 115(5) allows for amendment of the definition of “excluded premises” set out at subsection (2). The Committee considered that it would be possible for the Executive to use that power to take account of any amendments to Schedule 3 to the 1984 Act, without the need to alter the power at section 8 of that Act. The Executive is asked to comment.

Section 115(5):
Excluded premises

The Committee noted that this is a Henry VIII power, which would allow amendment of section 115(2) of the Bill. As this is a power to amend the definition of “excluded premises” the Committee considered that it is effectively a power to widen or narrow the practical application of the Bill. The Committee noted that there is nothing in the power to restrict its application to premises connected
with roads or the motor trade. For this reason, the Committee considered that affirmative procedure would be more appropriate and asks the Executive for comment.

Section 130:
Remote sales of alcohol

The Committee recognised that the supply of alcohol from outwith Scotland may present certain difficulties in relation to the licensing regime within Scotland. However, the Committee noted that the power at subsection (3) is very wide. In addition, subsection (4) means that the regulations may amend and disapply provisions of the Act, making it a “Henry VIII” power. The Committee would normally argue that such a wide power should be subject to affirmative procedure. The Executive is asked to comment.

Schedule 3, paragraph 8(4) and Schedule 4, paragraph 7(4):
Irresponsible drinks promotions

Similarly to the above point, the Committee generally considers that affirmative procedure should be used for Henry VIII powers and therefore asks the Executive for an explanation of its choice of negative procedure for the Henry VIII powers contained at schedule 3 paragraph 8(4) and schedule 4 paragraph 7(4) of the bill.

Consultation

The Committee noted that extensive consultation has already taken place on the issues addressed by the Bill. It acknowledges that consultation will take place on “all regulations under the Bill” and that Licensing Boards and the licensed trade will be consulted before licensing conditions are finalised. The Committee, however, questioned why, given that the Executive will continue to seek advice from the National Licensing Forum, and to liaise with bodies such as Alcohol Focus Scotland and all interested parties, it has not put a consultation requirement on the face of the bill. The Executive is asked to comment.

The Scottish Executive responded as follows:

Section 81(2): power to specify which Licensing Board is to exercise functions under Part 6

The Scottish Executive considers that the power in section 81 will enable the Executive by regulation to re-determine which Licensing Boards should deal with which matters under Part 6. If for example a National Database is set up to which all Boards have access, it won’t be necessary to require that certain matters are referred to the Licensing Board which issued a personal licence – any Licensing Board would be able to deal with the matter. The Executive considers it appropriate to reflect any such redetermination in the text of the legislation itself and that is what the power to modify in subsection (2)(a) is for. It may require consequential changes to other Parts of the Bill and that is why it is not confined to Part 6. The Executive considers that it would not be appropriate to use section 135 (which is mainly about provision ancillary to the Bill rather than the exercise of a power under the Bill) for this purpose.

Section 91:
Regulations as to closure orders

The Scottish Executive accepts the Committee’s point. The references to “Part” are a hangover from earlier drafts when the closure order provisions were in a Part by themselves. The Executive shall in the light of this helpful point bring forward amendments to make it clear that the provisions are confined only to applications and notices relating to closure orders.

As regards appeals, all rights of appeal are going to be spelt out in the appeals section(122) by an amendment to be introduced at Stage 2. This provision concerns only whether a board must have a formal hearings to consider applications for closure.
Section 115(3)(b):  
Excluded premises

The provisions reflect the current provision in section 28 of the 1976 Act. Whilst there may be argument that an order under section 115(5) could make the necessary change, the Executive thinks it would be more convenient that the change be made at the same time, and in the same instrument, as an order under the 1984 Act. If section 115(5) orders are made affirmative then, if Ministers were to rely only on section 115(5) to make the change, it would have to be in a separate instrument as the procedure would be different from that to which orders under section 8 of the 1984 Act are subject.

Section 115(5):  
Excluded premises

On reflection the Executive agrees with the Committee and will bring in an amendment at Stage 2 to make the provision subject to an affirmative procedure.

Section 130:  
Remote sales of alcohol

On reflection the Executive agrees with the Committee and will bring in an amendment at Stage 2 to make the provision subject to an affirmative procedure.

Schedule 3, paragraph 8(4) and Schedule 4, paragraph 7(4):  
Irresponsible drinks promotions

The Executive considers that the powers taken in schedule 3 paragraph 8(4) and schedule 4 paragraph 7(4) concern only the descriptions of types of promotional material in licensed premises and that changes of such descriptions cannot properly be characterised as Henry VII type powers. The changing of descriptions of promotions are not considered the type of legislative change that would require an affirmative vote procedure. In any event, this is the type of regulation that might have to be brought in quickly making affirmative procedure inappropriate. Please note that the Executive intends to bring in an amendment at stage 2 to make affirmative procedure the powers in section 25(2) of the Bill to amend schedule 3.

Consultation

The Executive considers that it would be unnecessary to spell such a requirement on the face of the Bill. The whole legislative exercise has been characterised at all stages with extensive consultation, which will continue.
MINUTES
8th Meeting, 2005 (Session 2)
Tuesday 1 March 2005

Present:
Bruce Crawford JP (Deputy Convener)  Fergus Ewing
Dr Sylvia Jackson                   Paul Martin
Michael McMahon                    Bristow Muldoon (Convener)
Tommy Sheridan

Also present: Margo MacDonald MSP.

Apologies: David Mundell MSP and Margaret Smith MSP.

The meeting opened at 2.04 pm.

5. Licensing (Scotland) Bill: The Committee agreed the remit and person specification for its proposed adviser on the Bill.

The meeting closed at 4.54 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

9th Meeting, 2005 (Session 2)

Tuesday 8 March 2005

Present:

Bruce Crawford JP (Deputy Convener)  Fergus Ewing
Dr Sylvia Jackson                    Paul Martin
Bristow Muldoon (Convener)          David Mundell
Tommy Sheridan                      Margaret Smith

Apologies: Michael McMahon MSP.

The meeting opened at 2.03 pm.

3. **Licensing (Scotland) Bill (in private):** The Committee considered a paper on arrangements for its consideration of the Bill at Stage 1 and agreed to consider a further paper at its next meeting.

4. **Licensing (Scotland) Bill (in private):** The Committee agreed a ranking of candidates for the post of adviser.

The meeting closed at 4.25 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

10th Meeting, 2005 (Session 2)

Tuesday 15 March 2005

Present:

Fergus Ewing  
Dr Sylvia Jackson
Paul Martin  
Michael McMahon
Brian Monteith (Committee Substitute)  
Bristow Muldoon (Convener)
Tommy Sheridan  
Margaret Smith

Apologies: Bruce Crawford JP MSP (Deputy Convener) and David Mundell MSP.

Also present: George Lyon MSP, Jamie McGrigor MSP and Mr Alasdair Morrison MSP.

The meeting opened at 2.03 pm.

7. Licensing (Scotland) Bill (in private): The Committee agreed the arrangements for its consideration of the Bill at Stage 1.

The meeting closed at 6.59 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

11th Meeting, 2005 (Session 2)

Tuesday 22 March 2005

Present:

Bruce Crawford JP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Dr Sylvia Jackson  Paul Martin
Michael McMahon  Bristow Muldoon (Convener)
Tommy Sheridan  Margaret Smith

Apologies: Fergus Ewing MSP and David Mundell MSP.

The meeting opened at 2.12 pm.

3. Licensing (Scotland) Bill: The Committee took evidence at Stage 1 from—

Panel 1
Rab Fleming, Head of Division, Local Governance and Licensing Division, Scottish Executive;
Jacqueline Conlan, Bill Team Leader, Licensing (Scotland) Bill, Scottish Executive;
Ian Fairweather, Bill Team, Licensing (Scotland) Bill, Scottish Executive; and
John St Clair, Office of the Solicitor, Scottish Executive

Panel 2
Sheriff Principal Gordon Nicholson, QC, Chair of the Nicholson Committee on the Review of Liquor Licensing Law in Scotland

Panel 3
Peter Daniels, Chairman of the Working Group on Off-sales in the Community; and
Superintendent George Clelland, Strathclyde Police, Member of the Working Group on Off-sales in the Community

Tony Rednall, Secretariat, Working Group on Off-sales in the Community

5. Licensing (Scotland) Bill (in private): The Committee considered lines of questioning for future meetings.

The meeting closed at 6.46 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

12th Meeting, 2005 (Session 2)

Tuesday 12 April 2005

Present:

Bruce Crawford JP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Fergus Ewing  Dr Sylvia Jackson
Paul Martin  Michael McMahon
Bristow Muldoon (Convener)  Tommy Sheridan
Margaret Smith

Apologies: David Mundell MSP

The meeting opened at 2.08 pm.

1. **Licensing (Scotland) Bill:** The Committee took evidence at Stage 1 from—

   **Panel 1**
   
   Paul Waterson, Chief Executive, Scottish Licensed Trade Association (SLTA); and

   Colin Wilkinson, Secretary, Scottish Licensed Trade Association (SLTA)

   **Panel 2**
   
   Kevin Swoffer, Head of Technical Services, British Retail Consortium; and

   David Poley, Director of Compliance and Good Practice, Portman Group

   **Panel 3**
   
   Ian McAlpine, Coal Industry Social Welfare Organisation, Committee of Registered Clubs Associations;

   Melanie Ward, President, National Union of Students (Scotland); and

   Keith Robson, Director, National Union of Students (Scotland)

The meeting closed at 4.57 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

13th Meeting, 2005 (Session 2)

Tuesday 19 April 2005

Present:

Bruce Crawford JP (Deputy Convener)            Mr David Davidson (Committee Substitute)
Fergus Ewing                               Dr Sylvia Jackson
Paul Martin                           Michael McMahon
Bristow Muldoon (Convener)                Margaret Smith

Mr David Davidson (Committee Substitute)

Dr Sylvia Jackson

Michael McMahon

Margaret Smith

Apologies: David Mundell MSP and Tommy Sheridan MSP

The meeting opened at 2.02 pm.

2. Licensing (Scotland) Bill: The Committee took evidence at Stage 1 from—

Panel 1

Patrick Browne, Chief Executive, Scottish Beer and Pub Association; and
Sue Allen, Vice President, Scottish Beer and Pub Association

Panel 2

Councillor Duncan MacIntyre, Chair, Mid-Argyll, Kintyre and Islay Divisional Licensing Board;
Councillor Rory Colville, Vice-Chair, Mid-Argyll, Kintyre and Islay Divisional Licensing Board;
Councillor Daniel Kelly, Chair, Bute, Cowal and Lomond Divisional Licensing Board;
Councillor Phillip Attridge, Chairman, City of Edinburgh Licensing Board; and
Robert Millar, Clerk, City of Edinburgh Licensing Board

Panel 3

Dan Russell, Clerk to the Licensing Board, South Ayrshire Council, SOLAR;
Fiona Stewart, Depute Clerk, Aberdeenshire North Licensing sub-division, SOLAR;
Councillor Jim Swan, Chair of the Licensing Bill Team, COSLA; and
Kathy Cameron, Policy Manager, COSLA

The meeting closed at 5.52 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

14th Meeting, 2005 (Session 2)

Tuesday 26 April 2005

Present:

Bruce Crawford JP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Fergus Ewing  Dr Sylvia Jackson
Paul Martin  Michael McMahon
Bristow Muldoon (Convener)  Tommy Sheridan
Margaret Smith

Apologies: David Mundell MSP

The meeting opened at 2.07 pm.

2. Licensing (Scotland) Bill: The Committee took evidence at Stage 1 from—

Panel 1

Malcolm Dickson, Deputy Chief Constable, Lothian and Borders Police, Association of Chief Police Officers in Scotland

Panel 2

Jack Law, Chief Executive, Alcohol Focus Scotland;
Mary Ellmers, National ServeWise Manager, Alcohol Focus Scotland;
Jane Hasler, Greater Glasgow Alcohol Action Team Co-ordinator;
Wille Caie, Project Manager, Safer City Centre Initiative; and
Neil Ross, Former Chairman, Moray Council on Addiction

The meeting closed at 5.47 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

15th Meeting, 2005 (Session 2)

Tuesday 3 May 2005

Present:

Bruce Crawford JP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Dr Sylvia Jackson                    Paul Martin
Bristow Muldoon (Convener)          Michael McMahon
Margaret Smith                      Tommy Sheridan

Apologies: David Mundell MSP and Fergus Ewing MSP

The meeting opened at 2.04 pm.

3. Licensing (Scotland) Bill: The Committee took evidence at Stage 1 from—

   Panel 1 – Federation of Small Businesses (FSB)
   Niall Stuart, Deputy Parliamentary Officer, FSB

   Panel 2 – Royal College of Nursing
   Hazel Watson, Professor of Nursing, Glasgow Caledonian University and Chair, Nursing Council on Alcohol; and
   Geoff Earl, Community Psychiatric Nurse, NHS Lothian and RCN Scotland Board Member for Lothians

   Panel 3 – Chief Medical Officer
   Dr Mac Armstrong, Chief Medical Officer for Scotland; and
   Professor Peter Donnelly, Deputy Chief Medical Officer for Scotland

The meeting closed at 4.13 pm
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

17th Meeting, 2005 (Session 2)

Tuesday 17 May 2005

Present:

Bruce Crawford JP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Fergus Ewing  Dr Sylvia Jackson
Paul Martin  Michael McMahon
Bristow Muldoon (Convener)  Tommy Sheridan
Margaret Smith

Apologies: David Mundell MSP

The meeting opened at 2.08 pm.

3. **Licensing (Scotland) Bill**: The Committee took evidence at Stage 1 from—

   Tavish Scott MSP, Deputy Minister for Finance and Public Service Reform;
   Jacqueline Conlan, Bill Team Leader, Licensing (Scotland) Bill, Scottish Executive; and
   John St Clair, Office of the Solicitor, Scottish Executive

4. **Licensing (Scotland) Bill (in private)**: The Committee agreed to defer consideration of the contents of its Stage 1 report on the Bill to a future meeting.

The meeting closed at 5.19 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

19th Meeting, 2005 (Session 2)

Tuesday 31 May 2005

Present:

Bruce Crawford JP (Deputy Convener)  Mr David Davidson (Committee Substitute)
Fergus Ewing                    Dr Sylvia Jackson
Michael McMahon               Paul Martin
Bristow Muldoon (Convener)        Margaret Smith

Apologies: David Mundell MSP and Tommy Sheridan MSP

The meeting opened at 2.05 pm.

2. Licensing (Scotland) Bill (in private): The Committee considered a draft Stage 1 report.

The meeting closed at 5.49 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

20th Meeting, 2005 (Session 2)

Tuesday 7 June 2005

Present:

Bill Butler (Committee Substitute)          Bruce Crawford JP (Deputy Convener)
Mr David Davidson (Committee Substitute)    Paul Martin
Michael McMahon                           Bristow Muldoon (Convener)
Margaret Smith

Apologies: Fergus Ewing MSP, Dr Sylvia Jackson MSP, David Mundell MSP and Tommy Sheridan MSP

The meeting opened at 2.06 pm.

2. Licensing (Scotland) Bill (in private): The Committee agreed the contents of its Stage 1 report subject to specified changes being made. The Committee also agreed to publish the report on Monday 13 June 2005.

The meeting closed at 4.08 pm.
Members who would like a printed copy of this Numbered Report to be forwarded to them should give notice at the Document Supply Centre.