Subordinate Legislation Committee

40th Report, 2005 (Session 2)

Licensing (Scotland) Bill as amended at stage 2
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Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

(a) any-

(i) subordinate legislation laid before the Parliament;

(ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter,

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Dr Sylvia Jackson (Convener)
Mr Adam Ingram
Gordon Jackson (Deputy Convener)
Mr Kenneth Macintosh
Mr Stewart Maxwell
Murray Tosh
Committee Clerking Team:

Clerk to the Committee
Ruth Cooper

Senior Assistant Clerk
David McLaren

Assistant Clerk
Jake Thomas

Committee Support Manager
Catherine Fergusson
The Committee reports to the Parliament as follows—

Introduction

1. At its meeting on 8 November 2005, the Committee considered the inserted or substantially amended delegated powers provisions in the Licensing (Scotland) Bill as amended at stage 2. The Committee reports to the Parliament on such provisions under Rule 9.7.9 of Standing Orders.

2. Under Rule 9.7.10, the Executive provided a supplementary delegated powers memorandum (“DPM”) to the Committee, which is published at Annex A to this report.

Delegated powers

3. The Bill, which makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold, has now completed Stage 2. The Committee noted that amendments and additions have been made to the subordinate powers conferred by the Bill.

4. The Committee considered and is content with the amendments made as set out in the DPM. The Committee, in particular, welcomed the Executive’s response to its concerns in relation to the provisions at section 25(2), section 115(5) and section 130(3) and was pleased to note that the Executive has made the provisions subject to affirmative rather than negative procedure.
ANNEX A

SUPPLEMENTARY MEMORANDUM ON DELEGATED POWERS

LICENSING (SCOTLAND) BILL

Provisions Conferring Power to Make Subordinate Legislation

1. This memorandum has been prepared by the Scottish Executives for the Subordinate Legislation Committee to update the Subordinate Legislation Committee on the changes made to the Licensing (Scotland) Bill at stage 2.

Delegated powers

Choice of procedure

2. 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 matters that they deal with are overwhelmingly of a technical or procedural nature and do not engage important or substantive provisions of the Bill. We do not believe affirmative resolution procedure will be necessary for this as it is not sufficiently important to merit a debate in the Scottish Parliament. However, the paragraph below notes those occasions where the Executive has amended regulations during stage 2 of the Bill to affirmative procedure.

Section 136(4) and (5) – Orders and regulations

3. The Subordinate Legislation Committee report at Stage 1 (paragraphs 5, paragraphs 18 to 20 and paragraphs 21 to 23) noted that certain of the powers taken would allow subordinate legislation to be used to amend primary legislation, and therefore considered that the affirmative procedure would be more appropriate to such provisions. In response the Executive agreed with the Committee’s findings and brought forward amendments to section 136 to make the following provisions subject to an affirmative procedure:

- Section 25(2) Conditions of a premises licence;
- Section 115(5) Excluded Premises;
- Section 130(3) Remote sale of alcohol.

PART 2: LICENSING BODIES & OFFICERS

Section 15A(1) – Training of 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

4. This power allows Ministers to prescribe training requirements with which Licensing Standards Officers must comply. In particular, Ministers will have the power to accredit both course content and course providers.
Reasons for taking this power

5. Section 13(4) of the Bill already enabled Scottish Ministers to prescribe the qualifications a Licensing Standards Officer would need, but did not allow Scottish Ministers to prescribe the training a Licensing Standards Officer should undertake. The National Licensing Forum agreed, when giving consideration to Licensing Standards Officers, that any training regarded as mandatory should be prescribed in order to ensure consistency across the country. Such training is considered likely to change as the Licensing Standards Officer’s role develops and was therefore considered to be best suited to being set out in regulations. As these regulations will be mainly procedural and technical and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

PART 3: PREMISES LICENCES

Section 48A(4) – Notification of determination

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

6. This provision confers on Scottish Ministers the power to set out the form, manner and timescales in which a Licensing Board must notify the relevant people of the reasons for the grant or refusal of a premises licence.

Reasons for taking this power

7. This power enables Scottish Ministers to ensure the notification process is consistent across the country. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. As these regulations will be of a procedural, technical nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

PART 4: OCCASIONAL LICENCES

Section 57A(4) – Notification of determination

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

8. This provision confers on Scottish Ministers the power to set out the form, manner and timescales in which a Licensing Board must notify the relevant people of the reasons for the grant or refusal of an occasional licence.

Reasons for taking this power

9. This power enables Scottish Ministers to ensure the notification process is consistent across the country. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. As these regulations will be of a procedural, technical nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.
PART 6: PERSONAL LICENCES

Section 70(2C) – Notification of determination

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

10. This provision confers on Scottish Ministers the power to set out the form, manner and timescales in which a Licensing Board must notify the relevant people of the reasons for the grant or refusal of a personal licence.

Reasons for taking this power

11. This power enables the Scottish Ministers to ensure the notification process is consistent across the country. It is considered appropriate for this level of detail to be contained in regulations rather than on the face of the Bill. As these regulations will be of a procedural, technical nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

PART 8: OFFENCES

Section 99(4C)(c) – Delivery of alcohol by or 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

12. This provision mirrors section 93(4) and confers on the Scottish Ministers a power by regulation to specify what documents, in addition to a passport and a European Union photocard driving licence, would be acceptable in establishing a child or young person’s age with regard to the delivery of alcohol.

Reasons for taking this power

13. There is already a plethora of different schemes and a continuing problem of fake ID and such a power would ensure that those delivering alcohol have a measure of reassurance of what is acceptable proof. However, it is considered likely to be too detailed for the Bill to set out a complete list of the types of documents that are acceptable. As these regulations will not change the application of Bill policy and again are primarily technical and specific, it was felt the use of negative procedure was the most appropriate.
PART 9: MISCELLANEOUS AND GENERAL

Section 118(10) – Vessels, vehicles and moveable structures

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

14. This provision confers the power on Scottish Ministers to modify as they consider necessary the application of the Bill to vessels, vehicles and moveable structures.

Reasons for taking this power

15. There are several provisions within the Bill that are primarily designed to apply to buildings (e.g. fire certificates, layout plans, neighbour notification). To provide alternative provisions for vehicles and other structures in the Bill would lead to over-complicated provisions. In addition the regulation-making power would enable a more flexible response to new innovations in this area of the market. Although this power would have the effect of amending primary legislation and would therefore usually be by affirmative procedure, it is considered that these regulations would be of a highly technical and highly delimited nature, designed only to ensure that necessary adaptations can be made to the provisions of the Bill in the case of vessels, vehicles and other moveable structures. As these regulations will not change the application of Bill policy - and in fact will ensure that that policy is successfully applied to vessels, vehicles and other moveable structures, it was felt the use of negative procedure was more appropriate than requiring a debate of the Scottish Parliament.

Section 120(2A) – 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

16. This amendment enables Scottish Ministers, in addition to specifying “relevant offences” as under section 120(1) (which trigger a review of the licence), to specify offences which would amount to ‘relevant offences’ only if they were committed on a number of occasions.

Reasons for taking this power

17. Since a licence review procedure could have a serious consequence for the licence holder, it would be disproportionate if certain offences where to trigger such a review on a single conviction. However a number of such convictions would demonstrate an unwillingness to tackle a problem or a disregard for the law which we believe should enable the licensing Board to consider whether further action is needed against the licence holder. It is expected that this would be the case with some offences under Part 1 of the Smoking, Health and Social Care (Scotland) Act 2005. 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
changes in what types of offence or repeated offences are considered in the context of alcohol licensing. As these regulations will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate. Furthermore, as the relevant offences are to be set out in regulations (see section 120(1)), it is considered that those offences which must be committed on a number of occasions to amount to a ‘relevant offence’ should also be contained in regulations.

**Section 127(1)(c) – Fees**

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

18. Section 127(1)(c) confers on the Scottish Ministers the power to make regulations which allow the recovery of increased costs of public services, including Police costs associated with a licensed premises to be made through the fee system.

*Reasons for taking this power*

19. Scottish Ministers had previously taken a power to make regulations setting out what fees are to be applied under the provisions of the Bill. This was amended by a non Executive amendment which would enable the recovery of extra public service costs carried by the community from the relevant licensed premises. It is considered that further guidance would be required through regulations. As the fee regime in its entirety is to be contained in the regulations, it is necessary for this aspect of the fees regime also to be contained in regulations. It is therefore considered appropriate for the level of detail required to be contained in regulations rather than on the face of the Bill. In addition, secondary legislation provides the flexibility to change the level and structure of the recovered charges regularly. As these regulations will be of a technical and procedural nature and will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.

**SCHEDULE 2: LOCAL LICENSING FORUMS**

**Schedule 2, paragraph 2 (1A) – Membership**

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

20. This provision confers the power on Scottish Ministers to change the minimum or maximum number of members of the Local Licensing Forum.

*Reasons for taking this power*

21. The Bill states members should be not fewer than 5 and not more than 10. This power allows Scottish Ministers to change these numbers if necessary following the experience of Local Licensing Forums in operation. Although this power in effect allows subordinate legislation to be used to amend primary legislation, it is considered that the modification possible here is highly delimited and specific and is not sufficiently important to merit a debate in the Scottish Parliament. As these
regulations will not change the application of Bill policy it was felt the use of negative procedure was the most appropriate.