Written submission from the Wine and Spirit Trade Association (WSTA)

About the WSTA and the SRC

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 340 companies producing, importing, exporting, transporting and selling wines and spirits. Our members include retailers who between them are responsible for thousands of licences in Scotland. We work with our members to promote the responsible production, marketing and sale of alcohol.

The Scottish Retail Consortium (SRC) is the lead trade association for retailers operating in Scotland and has been representing the retail sector since the Scottish Parliament’s inception in 1999. The SRC membership accounts for over 80 per cent of the retail sector, comprising retailers large and small, selling food and non-food and operating on the high street, in rural communities, out of town and online.

Our members have been in the vanguard of tackling underage sales including supporting the criminalisation of proxy purchasing. As part of the WSTA’s Retail of Alcohol Standards Group (RASG), retailers have pioneered the voluntary introduction of Challenge 21 and subsequently Challenge 25 initiatives and implemented these policies in stores long before legislation required it. These policies have been effective in preventing underage sales.

Our members also recognise the need for joined up working on this important issue. Community Alcohol Partnerships (CAP), created by RASG and supported by the Scottish Government through the Scottish Government Alcohol Industry Partnership (SGAIP) operate in local areas, bring together retailers, local authorities, police and schools to tackle specific problems with underage sales, proxy purchasing and alcohol related crime. Scotland’s first flagship CAP in East Edinburgh was launched in July 2013 by the Cabinet Secretary for Justice.

Through the SGAIP, the SRC in partnership with the Scottish Government has spearheaded the establishment of a multi-stakeholder National Licensing Advisory Group. The Advisory Group aims to act as a driver for greater consistency, better regulatory practice, greater efficiency and cost effectiveness in the licensing system in Scotland whilst also focusing efforts in promoting the licensing objectives and outcomes in the Licensing (Scotland) Act 2005 (“the 2005 Act”).

The industry also provides funding for Drinkaware to develop campaigns and education programmes to encourage responsibility and shift attitudes about the acceptability of drunkenness. The £100m ‘Why let good times’ campaign targeted at 18-25 year olds is just one example.

In addition, the industry has helped to champion a range of other initiatives aimed at reducing alcohol harm by working in partnership with Government and local authorities such as the Public Health Responsibility Deal, and Best Bar None. Through the Responsibility Deal, the industry has agreed to remove 1 billion units of alcohol from the market by 2015 and ensure 80% of alcohol products have appropriate health labels. Although these pledges were initiated through Westminster, they are supported by retailers and producers throughout the UK, including in Scotland. It is initiatives like these, that seek to engage with business
rather than prohibit, which have been proven to have a positive impact in tackling alcohol misuse.

General comments

The WSTA and the SRC welcome the opportunity to respond to the call for evidence from the Local Government and Regeneration Committee on the Air Weapons and Licensing (Scotland) Bill.

We recognise that there are areas in Scotland where alcohol misuse is a problem and are determined to play a positive role with Government and others in tackling alcohol-related harm. We support locally targeted partnership schemes, that are properly evaluated and evidence based, and work closely with our members to ensure that alcohol is sold and marketed responsibly, a responsibility our members take incredibly seriously. It is our view that whole of population approaches, whether introduced at a national or local level, are unlikely to effectively target those who misuse alcohol.

We also represent an industry that provides significant employment in Scotland – with well over 100,000 people involved in the retail of food and drink, from rural areas to town centres, and helps to boost economic growth in Scotland. It is therefore important that licensing laws not only uphold the licensing objectives but that it doesn't unfairly restrict businesses and add unnecessary administrative burdens.

We would therefore echo the sentiment of the policy memorandum which notes: “Alcohol licensing is not, however intended to prohibit responsible consumption nor to undermine the economic interests of the alcohol trade.”

There are many aspects of the draft Bill, which we welcome, particularly the proposals which seek to address a number of anomalies and inconsistencies of the current licensing regime. However, we remain concerned that aspects of licensing law remain overly complex, poorly understood and that the Government has focused on introducing new laws rather than ensuring that existing regulations operate effectively.

While we welcome many proposals contained in the Bill, we believe that further consideration needs to be given to bringing forward a consolidated Act. Since the introduction of the 2005 Licensing Act, there have been four licensing Bills in five years, creating additional burdens for businesses and a further layer of complexity to the licensing regime. Many aspects of the existing licensing regime do not articulate well with the Scottish Government’s Better Regulation agenda: that regulations should be proportionate, consistent, accountable, transparent and targeted. A consolidated Act would go some way to simplifying the licensing regime and bringing it more in line with the five principles of Better Regulation.

So too would a review of licensing laws which impede the responsible sale of alcohol.

For example, the multi-buy ban and the requirement for separate alcohol areas significantly limit retailers’ ability to responsibly promote food with alcohol sales. For
instance, the ability to promote locally sourced food and drink like locally sourced whisky and haggis to coincide with national celebrations like Burns Night. The restrictions also mean smaller retailers are often forced to sell alcohol in impractical or unsuitable areas, which can lead to a greater likelihood of theft and restrict the way their business operates. One area where we would like to see greater flexibility is the amount of space that retailers are permitted to sell alcohol. Often stores will wish to amend their layouts to take account of seasonal changes in consumer demand or a need to make their stores more accessible for store users. This may mean that at a time of year when they sell less alcohol and would ordinarily seek to amend their shop layout they are unable to do so. If there was greater flexibility for retailers to be able to amend defined alcohol areas then this would allow them to make better use of their shop space.

Another frustration reported by retailers is a final alcohol licence being reliant on sign-off from all other regulations. Recently, a member store was unable to sell alcohol for two days while waiting for sign-off for their bakery sink. While they were able to still bake bread they were unable to sell alcohol, which is surely an unintended consequence?

We have also sought to raise concerns about aspects of the proposed Bill such as re-introducing a fit and proper person test and widening the definition of overprovision, which could damage the trade. It is our view that these proposals, as they stand, are unnecessary, poorly defined and will only add another layer of complexity to the licensing regime, without protecting the licensing objectives.

A further aspect of the current alcohol licensing system which would benefit from urgent attention is the need for updated guidance. The current guidance is no longer considered fit for purpose, which makes it enormously difficult for anyone with an interest in licensing to adequately interpret licensing law. Ensuring that there is consistent, well-defined guidance would help to provide some much needed consistency to the licensing system.

We would be willing to appear before the Committee.

**Licensing objectives**

41 Protecting young persons from harm

Our members agree that there needs to be robust laws governing the sale of alcohol to young people and a concerted effort is needed to prevent underage drinking and associated alcohol-related harm in Scotland. Retailers have made significant progress in tackling underage sales, through the voluntary introduction of Challenge 25, which is now mandatory across Scotland, and the development of age verification schemes. A recent review of Challenge 25, *Rising to the Challenge*, found that 86% of 18-24 year olds have heard of Challenge 25 and 79% understood its purpose. However, as underage sales have fallen, there has been a worrying increase in rates of proxy purchasing, whereby friends and family purchase alcohol for young people.

Our members therefore support the introduction of a new offence regarding the unsupervised supply of alcohol to a child or young person in a public place and the
widening of the definition of a young person, which is designed to crack-down on so-called 'drinking dens'.

We are however conscious that tougher laws on underage sales alone are unlikely to sufficiently address the rise in proxy purchasing. This is because proxy purchasing, by its nature, is very difficult to police. Therefore, greater partnership working to address the root causes of underage drinking is vital, which is why our members support the introduction of Community Alcohol Partnerships in Scotland. CAPs are designed to tackle underage drinking in local communities, through co-operative working between alcohol retailers/licensees and local stakeholders such as Police and Councils. In some areas, CAPs have reduced alcohol-related ant-social behaviour amongst young people by up to 40%.

**Statements of licensing policy**

**42 Licensing policy periods**

The proposal to bring the time period of local licensing statements into line with local authority elections and to extend the duration of licensing policy statements is a sensible amendment, which we support. However, it should be pointed out that for many Boards,

...reviewing existing policy statements is simply a box ticking exercise, calling into question the need and worth of licensing policy statements for many areas.

**Fit and proper person test**

In our response to the *Further Options for Alcohol Licensing* consultation we pointed out that there is already a robust licence review process, which negates the need to re-introduce a fit and proper test. We also sought a clear definition of 'fit and proper' and raised concerns about how objectivity would be achieved? It is our view that these questions have not been properly addressed and without adequate safeguards in place the re-introduction of a fit and proper test could have the potential to be misused or abused by Local Boards. While we appreciate it is difficult to accurately define what a fit and proper test should include, allowing Boards to interpret the definition as they see fit is subjective and undesirable and does not fit with the Better Regulation principles.

There are also concerns, across the trade, that the introduction of a fit and proper test could significantly increase administrative burdens on retailers. Therefore it is very difficult for us to support the proposal to introduce a fit and proper test without appropriate safeguards in place.

**43 Premises licence application: ground for refusal**

As it stands the grounds for refusal based on a fit and proper test are poorly defined - a point which has been rightly identified by the Committee. While we support the ability of Boards to be able to consider relevant information that may deem a person unfit to hold a licence, there is little direction about what can be considered 'relevant' and the current definition is far too broad.
44 Application to transfer premises licence: ground for refusal

Whilst we support the need for Boards to be able to appropriately screen the suitability of licence holders when transferring premises licences, basing this on an ill-defined fit and proper test is undesirable.

45 Ground for review of premises licence

Again, we have concerns that the grounds for a review of a premises licence based on a fit and proper test are far too subjective.

46 Personal licence applications and renewals: ground for refusal

As with section 45.

47 Personal licence holders: procedure on receipt of notice of conviction

As with section 45.

48 Personal licence holders: conduct inconsistent with the licensing objectives

As with section 45.

Relevant offences and foreign offences

49 Premises licences: procedure in relation to relevant offences or foreign offences

We support the Chief Constable having appropriate discretion to decide whether a hearing is necessary and believe this proposal will limit unnecessary hearings and help to create a more streamlined process.

50 Personal licences: procedure in relation to relevant offences or foreign offences

As with section 49, we support the proposal to streamline the review process and provide the Chief Constable and Boards with wider discretionary powers, in situations where it wouldn't be appropriate to hold a licence review.

52 Offences of supplying alcohol to a child or young person

As noted above, we support the proposal to introduce an offence for supplying alcohol to a young person. In our response to the Further Options for Alcohol consultation response we sought further details on these proposals to assess the potential ramifications for licence holders and are satisfied that the Government has provided these details. We also highlighted that the current law allows parents and caregivers to set a responsible drinking example by purchasing a 16 or 17 year old a glass of wine or beer to accompany their meal. We welcome the proposal to retain
this aspect of the law which will reduce the risk of criminalising responsible licence holders.

**Miscellaneous**

53 Meaning of “alcohol”: inclusion of angostura bitters

We support this amendment following the change in definition of angostura bitters.

54 Overprovision

We have a number of concerns about the proposal to allow an entire Board area to be considered an area of overprovision. The fundamental principle of licensing is that each application should be determined on its own merits. The licensing regime is not intended to prohibit responsible consumption or undermine the economic interests of the alcohol trade, it is difficult to argue that overprovision doesn't prohibit both.

The suggestion in the policy memorandum that Boards are "wary of making use of overprovision for fear of legal challenge" is a fallacy: Licence holders would only ever mount a legal challenge if they felt a Board had misused its powers. After all judicial review is an inherent and cherished part of any fair democratic system.

Local Authorities already have the powers to define an area as overprovided for but this needs to be evidence based. The proposal to allow an entire area to be considered over-provided for would alter the onus of proof so licence holders have to prove that a Board area isn't over-provided for.

Overprovision also fails to deal with the root causes of alcohol misuse. It would be implausible to argue that consumers don't travel across boundaries that could be considered overprovided, for example from Glasgow to East Renfrewshire to undertake grocery shopping. In addition, overprovision fails to differentiate between a prospective licensee that is a responsible retailer while doing nothing to clamp down on existing licences that may be deemed irresponsible.

The proposal could also have the effect of preventing new businesses from entering the market and lead to a restriction on the rights and freedoms of new businesses against incumbent business in the areas assessed as having 'overprovision'. There have been many

notable cases of investment opportunities for retailers that have fallen through because a licence wasn't available in that area. This is a double punishment for responsible consumers who would also be restricted from purchasing a wider range of goods offered by retailers such as fresh fruit and vegetables. It is worth noting that alcohol sales typically make up a very small proportion of total sales for supermarkets.

There is little evidence to suggest that new businesses entering the market would lead to increased consumption or an increase in anti-social behaviour and crime. Given that alcohol consumption and alcohol-related crime in Scotland is falling this proposal will have the impact of restricting trade whilst doing little to impact upon the licensing objectives of improving public health or reducing crime and anti-social behaviour.
55 Duty of Licensing Boards to produce annual financial report

The requirement for Licensing Boards to produce annual financial reports is a welcome proposal. It will increase accountability and is a first step towards operating on a cost recovery principle, as prescribed by the 2005 Act and 2009 EU Services Directive.

57 Personal licences: grant, duration and renewal

We welcome the proposal to amend the current anomaly which prevents licence holders who have their licence revoked for failing to undertake refresher training, from reapplying for a licence within 5 years. Given that many people’s livelihoods depend on the ability to hold a personal licence it was an erroneous aspect of the licensing regime, which was unfair and discriminatory, and we welcome the Government’s decision to rectify this irregularity.

We also support the decision to extend the period in which personal licence holders may apply to renew their licence to 9 months, beginning 12 months before the expiry date of the licence.

58 Processing and deemed grant of applications

This is a welcome proposal which we hope will go some way in addressing the inconsistency of processing times for premises applications, which can be costly for businesses.