Passage of the

Licensing (Scotland) Bill 2005

SP Bill 37 (Session 2), subsequently 2005 asp 16

SPPB 88

Volume 1: Introduction and Stage 1

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. The groupings are an exception to this – in order to assist members during actual proceedings, the published groupings included the text of amendments in debating order in addition to the list of groupings. The text of all amendments is included in this volume in the Marshalled Lists and so to avoid duplication only the list of groupings, and not the text of amendments in debating order, is included here.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
- Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Local Government and Transport Committee’s Stage 1 Report included the written submissions received from those who gave oral evidence. However, other written evidence was not included in the Stage 1 Report (although it was published on the Parliament’s website). That other written evidence is included in this volume after the Stage 1 Report (with the following changes from the list provided at Annexe D of the Stage 1 Report: submissions from Aberdeen City Licensing Board, Dundas & Wilson CS LLP and Young Scot have been added, while the submission from the Royal College of Nursing Scotland has been omitted (as it is already included in Annexe C of the Report)).

The Justice 2 Committee considered the Bill at Stage 1 and its report to the Local Government and Transport Committee is included in the Stage 1 Report. The annexes to the Justice 2 Committee’s report were not included in the Stage 1 Report but are included in this volume (along with a paper summarising the information received from Licensing Boards).

A paper provided to the Subordinate Legislation Committee but not annexed to its report to the Local Government and Transport Committee is also included in this volume, as is written evidence submitted to the Finance Committee.
Additional correspondence received by the Local Government and Transport Committee (for example, from the Scottish Executive) is included where available.

A number of Stage 3 amendments lodged after the deadline for submission of such amendments were taken as “manuscript” amendments. As a consequence, three supplements to the Marshalled List of Amendments selected for Stage 3 were published and are included in this volume. The amendments in the first supplement are included in the Groupings. Although not shown in the Groupings of Amendments for Stage 3, the amendments in the second and third supplements were both debated as part of Group 5.

Forthcoming titles

The next titles in this series will be:

- SPPB 89: Housing (Scotland) Bill 2005
- SPPB 90: Family Law (Scotland) Bill 2005
- SPPB 91: Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill 2005
- SPPB 92: Human Tissue (Scotland) Bill 2005
Licensing (Scotland) Bill
[AS INTRODUCED]

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Licensing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes.

Part 1

Core provisions

1 Prohibition of unlicensed sale of alcohol

(1) Alcohol is not to be sold on any premises except under and in accordance with—
(a) a premises licence, or
(b) an occasional licence,
granted under this Act in respect of the premises.

(2) Subsection (1) does not apply to the selling of alcohol—
(a) on exempt premises, or
(b) by wholesale to a person who is a trader for the purposes of that person’s trade.

(3) A person who—
(a) sells alcohol, or
(b) knowingly allows alcohol to be sold,
in breach of subsection (1) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to—
(a) a fine not exceeding £20,000,
(b) imprisonment for a term not exceeding 6 months, or
(c) both.

2 Meaning of “alcohol”

(1) In this Act, “alcohol”—
(a) means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but

(b) does not include—

(i) alcohol which is of a strength of 0.5% or less at the time of its sale,

(ii) perfume,

(iii) any flavouring essence recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,

(iv) the aromatic flavouring essence commonly known as angostura bitters,

(v) alcohol which is, or is included in, a medicinal product,

(vi) denatured alcohol,

(vii) methyl alcohol,

(viii) naphtha, or

(ix) alcohol contained in liqueur confectionery.

(2) In this section—

“beer”, “cider”, “denatured alcohol”, “dutiable alcoholic liquor” and “wine” have the same meanings as in the Alcoholic Liquor Duties Act 1979 (c.4), and “medicinal product” has the same meaning as in section 130 of the Medicines Act 1968 (c.67).

3 Certain supplies of alcohol to be treated as sales

(1) A supply of alcohol which is not otherwise a sale of the alcohol is, in the circumstances described in subsection (2) or (3), to be treated for the purposes of this Act as if it were a sale of the alcohol.

(2) The first set of circumstances is where the supply is by or on behalf of a club to, or to the order of, a member of the club.

(3) The second set of circumstances is where the supply is made to, or to the order of, a person pursuant to a right acquired by the person under a contract.

4 The licensing objectives

(1) For the purposes of this Act, the licensing objectives are—

(a) preventing crime and disorder,

(b) securing public safety,

(c) preventing public nuisance,

(d) protecting and improving public health, and

(e) protecting children from harm.

(2) In this Act, references to the “crime prevention objective” are references to the licensing objective mentioned in subsection (1)(a).
PART 2

LICENSING BODIES AND OFFICERS

Licensing Boards

5 Licensing Boards

(1) There is to continue to be a Licensing Board for—
   (a) the area of each council whose area is not, at the time this section comes into
   force, divided into licensing divisions under section 46(1) of the Local
   Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”), and
   (b) each licensing division of such an area which is so divided at that time.

(2) A council whose area is not so divided at that time may subsequently make a
   determination that their area is to be divided into divisions for the purposes of this Act.

(3) Where a council makes such a determination—
   (a) there is to be a separate Licensing Board for each of the divisions,
   (b) the Licensing Board for the council’s area is dissolved on the date on which those
       separate Licensing Boards are elected in accordance with schedule 1, and
   (c) anything done by the Licensing Board for the council’s area before the Board is
       dissolved is, to the extent that it has effect at that time, to have effect after that
       time as if done by such of the separate Licensing Boards as the council may
determine.

(4) A council which has made a determination (whether under subsection (2) or section
   46(1) of the 1994 Act) that their area is to be divided into divisions may revoke the
determination.

(5) Where a council revokes such a determination—
   (a) there is to be a single Licensing Board for the whole of the council’s area,
   (b) each of the Licensing Boards for the divisions is dissolved on the date on which
       the single Licensing Board is elected in accordance with schedule 1, and
   (c) anything done by the Licensing Boards for the divisions before they are dissolved
       is, to the extent that it has effect at that time, to have effect after that time as if
       done by the single Licensing Board.

(6) Subsection (7) applies where a council—
   (a) makes a determination under subsection (2), or
   (b) revokes such a determination or a determination made under section 46(1) of the

(7) The council must, no later than 7 days after the making of the determination or the
    revocation—
   (a) notify the Scottish Ministers of the determination or revocation, and
   (b) publicise it in such manner as the council sees fit.

(8) Schedule 1 makes further provision about the constitution of Licensing Boards, their
    procedure and other administrative matters relating to them.
6 Statements of licensing policy

(1) Every Licensing Board must, before the beginning of each 3 year period, publish a statement of their policy with respect to the exercise of their functions under this Act during that period (referred to in this Act as a “licensing policy statement”).

(2) A Licensing Board may, during a 3 year period, publish a supplementary statement of their policy with respect to the exercise of their functions during the remainder of that period (referred to in this Act as a “supplementary licensing policy statement”).

(3) In preparing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must—

(a) ensure that the policy stated in the statement seeks to promote the licensing objectives, and

(b) consult—

(i) the Local Licensing Forum for the Board’s area,

(ii) if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(5) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative, and

(iii) such other persons as the Board thinks appropriate.

(4) In exercising their functions under this Act during each 3 year period, a Licensing Board must have regard to the licensing policy statement, and any supplementary licensing policy statement, published by the Board in relation to that period.

(5) At the request of a Licensing Board—

(a) the appropriate chief constable, or

(b) the relevant council,

must provide to the Board such statistical or other information as the Board may reasonably require for the purpose of preparing a licensing policy statement or supplementary licensing policy statement.

(6) On publishing a licensing policy statement or a supplementary licensing policy statement, a Licensing Board must—

(a) make copies of the statement available for public inspection free of charge, and

(b) publicise—

(i) the fact that the statement has been published, and

(ii) the arrangements for making copies available for public inspection in pursuance of paragraph (a).

(7) In this section, “3 year period” means—

(a) the period of 3 years beginning with such day as the Scottish Ministers may by order appoint, and

(b) each subsequent period of 3 years.
Duty to assess overprovision

(1) Each licensing policy statement published by a Licensing Board must, in particular, include a statement as to the extent to which the Board considers there to be overprovision of—

(a) licensed premises, or
(b) licensed premises of a particular description,
in any locality within the Board’s area.

(2) It is for the Licensing Board to determine the “localities” within the Board’s area for the purposes of this Act.

(3) In considering whether there is overprovision for the purposes of subsection (1) in any locality, the Board must—

(a) have regard to the number and capacity of licensed premises in the locality, and
(b) consult the persons specified in subsection (4).

(4) Those persons are—

(a) the appropriate chief constable,
(b) such persons as appear to the Board to be representative of the interests of—
   (i) holders of premises licences in respect of premises within the locality,
   (ii) persons resident in the locality, and
(c) such other persons as the Board thinks fit.

(5) In this section, references to “licensed premises” do not include references to any premises in respect of which an occasional licence has effect.

Applicants attempting to influence Board members

(1) If a person making an application under this Act to a Licensing Board attempts, at any time before the application is determined by the Board, to influence a member of the Board to support the application, the person commits an offence.

(2) If, in relation to any application made to, but not yet determined by, a Licensing Board under this Act, proceedings for an offence under subsection (1) are brought against the applicant—

(a) the Board must not determine the application until after the proceedings are concluded, and
(b) if the applicant is convicted of the offence, the Board may refuse to consider the application.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Licensing Board’s duty to keep a public register

(1) Each Licensing Board must keep a register (referred to in this Act as a “licensing register”) containing information relating to—

(a) premises licences, personal licences and occasional licences issued by the Board,
(b) the Board’s decisions in relation to applications made to the Board under this Act, and
(c) other decisions of the Board relating to the licences mentioned in paragraph (a).

(2) The Scottish Ministers may by regulations make provision as to—
(a) matters, in addition to those specified in paragraphs (a) to (c) of subsection (1), in relation to which licensing registers are to contain information,
(b) the information which such registers are to contain, and
(c) the form and manner in which the registers are to be kept.

(3) A Licensing Board must make the licensing register kept by the Board available for public inspection at all reasonable times.

Local Licensing Forums

10 Local Licensing Forums

(1) Each council must establish a Local Licensing Forum for their area.

(2) However, where the area of a council is divided into licensing divisions, the council may, instead of establishing a Local Licensing Forum for their area, establish separate such Forums for each division.

(3) Each Licensing Board must hold, at least once in each calendar year, a joint meeting with the Local Licensing Forum for the Board’s area.

(4) Schedule 2 makes further provision about Local Licensing Forums, including provision about their membership and procedural and other administrative matters in relation to them.

11 General functions of Local Licensing Forums

(1) Each Local Licensing Forum has the following general functions—
(a) keeping under review—
(i) the operation of this Act in the Forum’s area, and,
(ii) in particular, the exercise by the relevant Licensing Board or Boards of their functions, and
(b) giving such advice and making such recommendations to that or any of those Boards in relation to those matters as the Forum considers appropriate.

(2) Subsection (1) does not enable a Local Licensing Forum to—
(a) review, or
(b) give advice, or make recommendations, in relation to, the exercise by a Licensing Board of their functions in relation to a particular case.

(3) In this section, section 12 and schedule 2, “relevant Licensing Board”, in relation to a Local Licensing Forum, means—
(a) the Licensing Board for the Forum’s area, or
(b) in the case of a Local Licensing Forum for a council area which is divided into licensing divisions, each of the Licensing Boards for those divisions.
12 Licensing Boards’ duties in relation to Local Licensing Forums

(1) A Licensing Board must—
   (a) in exercising any function, have regard to any advice given, or recommendation made, to them in relation to the function by a Local Licensing Forum, and
   (b) where the Board decides not to follow the advice or recommendation, give the Forum reasons for the decision.

(2) At the request of a Local Licensing Forum, a relevant Licensing Board must provide to the Forum copies of such relevant statistical information as the Forum may reasonably require for the purposes of the Forum’s general functions.

(3) In this section, “relevant statistical information” means, in relation to a Licensing Board, such statistical information as the Board may have obtained under section 6(5).

13 Licensing Standards Officers

(1) Each council must appoint for their area one or more officers to be known as Licensing Standards Officers.

(2) A Licensing Standards Officer is to exercise, in relation to the council area for which the Officer is appointed, the functions conferred on a Licensing Standards Officer by virtue of this Act.

(3) The number of Licensing Standards Officers for any council area is to be such as the council may determine.

(4) The Scottish Ministers may by regulations prescribe qualifications and experience required for appointment as a Licensing Standards Officer.

(5) Where the Scottish Ministers have made regulations under subsection (4), a council must not appoint an individual to be a Licensing Standards Officer unless the individual possesses the qualifications and experience prescribed in the regulations in relation to that appointment.

(6) Otherwise, the terms and conditions of appointment of a Licensing Standards Officer appointed by a council under this section are to be such as the council may determine.

14 General functions of Licensing Standards Officers

(1) A Licensing Standards Officer for a council area has the following general functions—
   (a) providing to interested persons information and guidance concerning the operation of this Act in the area,
   (b) supervising the compliance by the holders of—
      (i) premises licences, or
      (ii) occasional licences,
   in respect of premises in the area with the conditions of their licences and other requirements of this Act,
   (c) providing mediation services for the purpose of avoiding or resolving disputes or disagreements between—
(i) the holders of the licences referred to in paragraph (b), and
(ii) any other persons,
concerning any matter relating to compliance as referred to in that paragraph.

(2) The function under subsection (1)(b) includes, in particular, power—

(a) where a Licensing Standards Officer believes that any condition to which a premises licence or occasional licence is subject has been or is being breached—

(i) to issue a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice, and
(ii) if, in the case of a premises licence, such a notice is not complied with to the satisfaction of the Officer, to make a premises licence review application in respect of the licence,

(b) in relation to a premises licence, to make an application under that section for review of the licence on any other competent ground for review.

### 15 Powers of entry and inspection

(1) A Licensing Standards Officer for a council area may, for the purpose of determining whether the activities being carried on in any licensed premises in the area are being carried on in accordance with—

(a) the premises licence or, as the case may be, occasional licence in respect of the premises,
(b) the licensing objectives, and
(c) any other requirements of this Act,
exercise the powers specified in subsection (3).

(2) A Licensing Standards Officer for any council area may, for the purpose of determining whether the requirements of this Act are being complied with, also exercise the powers specified in subsection (3) in relation to any other premises in the area if—

(a) alcohol is being sold on the premises, or
(b) the Officer has reasonable grounds for believing that alcohol is being sold on the premises.

(3) The powers referred to in subsections (1) and (2) are—

(a) power to enter the premises at any time for the purpose of exercising the power specified in paragraph (b), and
(b) power to carry out such inspection of the premises and of any substances, articles or documents found there as the Officer thinks necessary.

(4) Where a Licensing Standards Officer exercises either of those powers in relation to any premises, the persons specified in subsection (5) must—

(a) give the Officer such assistance,
(b) provide the Officer with such information, and
(c) produce to the Officer such documents,
as the Officer may reasonably require.

(5) The persons referred to in subsection (4) are—
(a) in the case of licensed premises, the holder of the premises licence or, as the case may be, occasional licence in respect of the premises,

(b) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,

(c) in the case of premises other than licensed premises, the person having management and control of the premises, and

(d) in any case, any person working on the premises at the time the Officer is exercising the power.

(6) A person who—

(a) intentionally obstructs a Licensing Standards Officer in the exercise of any power under subsection (3), or

(b) refuses or fails, without reasonable excuse, to comply with a requirement made under subsection (4),

commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**PART 3**

**PREMISES LICENCES**

*Introductory*

**16 Premises licence**

In this Act, “premises licence”, in relation to any premises, means a licence issued by a Licensing Board under section 24(1) or 45(2) authorising the sale of alcohol on the premises.

**17 Meaning of “appropriate Licensing Board”**

(1) In this Part, “the appropriate Licensing Board” means, in relation to any premises or premises licence issued in respect of any premises—

(a) the Licensing Board in whose area the premises are situated, or

(b) where the premises are situated in the area of more than one Licensing Board—

(i) the Board in whose area the greater or greatest part of the premises is situated, or

(ii) if neither or none of those Boards falls within sub-paragraph (i), such of the Boards as is nominated in accordance with subsection (2).

(2) In a case falling within subsection (1)(b)(ii), the applicant for a premises licence in respect of the premises must nominate one of the Licensing Boards to be the Licensing Board for the purposes of the application of this Part in relation to the premises.
18 **Meaning of “premises manager”**

In this Act, “premises manager”, in relation to any licensed premises in respect of which a premises licence has effect, means the individual for the time being specified as such in the premises licence.

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**Premises licence applications**

19 **Application for premises licence**

(1) Any person, other than an individual under the age of 18, may apply to the appropriate Licensing Board for a premises licence in respect of any premises.

(2) An application under subsection (1) must—

(a) contain a description of the subject premises, and

(b) be accompanied by—

(i) an operating plan for the subject premises,

(ii) a plan (referred to in this Act as a “layout plan”), in the prescribed form, of the subject premises, and

(iii) the certificates required by section 48(1).

(3) An application under subsection (1) which complies with subsection (2) is referred to in this Act as a “premises licence application”.

(4) An “operating plan” in relation to any premises is a document in the prescribed form containing—

(a) a description of the activities to be carried on in the premises,

(b) a statement of the times during which it is proposed that alcohol be sold on the premises,

(c) a statement as to whether the alcohol is to be sold for consumption on the premises, off the premises or both,

(d) prescribed information about the individual who is to be the premises manager, and

(e) such other information in relation to the premises and the activities to be carried on there as may be prescribed.

20 **Notification of application**

(1) Where a Licensing Board receives a premises licence application, the Board must give notice of the application to—

(a) each person having a notifiable interest in neighbouring land,

(b) any community council within whose area the premises are situated,

(c) the council within whose area the premises are situated,

(d) the appropriate chief constable; and

(e) the fire authority for the area in which the premises are situated.

(2) A notice under subsection (1) must be accompanied by a copy of the application.
(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (1)(d), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).

(4) Those notices are—

(a) a notice stating that neither—

(i) the applicant, nor

(ii) in the cases where the applicant is a partnership or a company, or where the application is in respect of premises which are to be used wholly or mainly for the purposes of a club, any connected person,

has been convicted of any relevant offence or foreign offence, or

(b) a notice specifying any convictions of—

(i) the applicant, or

(ii) in any of the cases mentioned in paragraph (a)(ii), any connected person,

for a relevant offence or a foreign offence.

(5) Where the appropriate chief constable—

(a) proposes to give a notice under subsection (4)(b), and

(b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application be refused,

the chief constable may include in the notice a recommendation to that effect.

(6) In this section, “neighbouring land” and, in relation to that expression, “notifiable interest” have such meanings as may be prescribed for the purposes of this section.

21 Objections and representations

(1) Where a premises licence application is made to a Licensing Board, any person may, by notice in writing to the Licensing Board—

(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 22(5), or

(b) make representations to the Board concerning the application, including, in particular, representations—

(i) in support of the application,

(ii) as to modifications which the person considers should be made to the operating plan accompanying the application, or

(iii) as to conditions which the person considers should be imposed.

(2) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any premises licence application made to the Board, the Board must—

(a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and

(b) have regard to the objection or representation in determining the application,

unless the Board rejects the notice under subsection (3).
(3) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the objection or representation is frivolous or vexatious.

(4) Where a Licensing Board rejects a notice of objection or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

(5) In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—

(a) recording the Board’s rejection of the notice and the grounds for the rejection, and

(b) certified by the clerk of the Board to be a true copy,

is sufficient evidence of the rejection and of the establishment of the ground for rejection.

22 Determination of premises licence application

(1) A premises licence application received by a Licensing Board is to be determined in accordance with this section.

(2) The Licensing Board must hold a hearing for the purpose of considering and determining the application.

(3) If none of the grounds for refusal is established, the Board must grant the application.

(4) If any of the grounds for refusal is established, the Board must refuse the application.

(5) The grounds for refusal are—

(a) that the subject premises are excluded premises,

(b) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,

(c) that, having regard to—

(i) the nature of the activities proposed to be carried on in the subject premises,

(ii) the location, character and condition of the premises, and

(iii) the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol,

(d) that, having regard to the number and capacity of—

(i) licensed premises, or

(ii) licensed premises of the same or similar description as the subject premises,

in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.

(6) In considering, for the purposes of the ground for refusal specified in subsection (5)(b), whether the granting of the application would be inconsistent with the crime prevention objective, the Licensing Board must, in particular, take into account—

(a) any conviction notice of which is given by the appropriate chief constable under subsection (4)(b) of section 20, and
(b) any recommendation of the chief constable included in the notice under subsection (5) of that section.

(7) Where the Licensing Board considers that—
(a) they would refuse the application as made, but
(b) if a modification proposed by them were made to the operating plan for the subject premises accompanying the application, they would be able to grant the application,
the Board must, if the applicant accepts the proposed modification, grant the application as modified.

(8) Where the Licensing Board refuses the application—
(a) the Board must specify the ground for refusal, and
(b) if the ground for refusal is that specified in subsection (5)(b), the Board must specify the licensing objective or objectives in question.

(9) In subsection (5)(d), references to “licensed premises” do not include licensed premises in respect of which an occasional licence has effect.

23 Further application after refusal of premises licence application

(1) Subsection (2) applies where a Licensing Board has refused a premises licence application in respect of any premises (such a refusal being referred to in this section as the “earlier refusal”).

(2) Subject to subsection (3), the Board must refuse any subsequent premises licence application in respect of the same premises made before the expiry of the period of one year beginning with the date of the earlier refusal.

(3) Subsection (2) does not apply in relation to any subsequent application made during that period if—
(a) at the time of the earlier refusal, the Board directed that the subsection would not apply to any subsequent application, or
(b) the Board is satisfied that there has been a material change of circumstances since the earlier refusal.

24 Issue of licence and summary

(1) Where a Licensing Board grants a premises licence application, the Board must issue to the applicant—
(a) a premises licence—
(i) in the prescribed form, and
(ii) containing the information and documents specified in subsection (2), and
(b) a summary of the licence in the prescribed form.

(2) The information and documents referred to in subsection (1)(a)(ii) are—
(a) the name and address of—
(i) the holder of the licence,
(ii) the premises manager in respect of the premises to which the licence relates,

(b) a description of the premises in respect of which the licence is issued,

(c) the date on which the licence takes effect,

(d) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found,

(e) the operating plan and layout plan in respect of the premises to which the licence relates, and

(f) such other information as may be prescribed.

Conditions of premises licence

25 Conditions of premises licence

(1) Except to the extent that schedule 3 provides otherwise, every premises licence is subject to the conditions specified in that schedule.

(2) The Scottish Ministers may by regulations modify schedule 3 so as—

(a) to add such further conditions as they consider necessary or expedient for the purposes of any of the licensing objectives, or

(b) to extend the application of any condition specified in the schedule.

(3) The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of premises licences.

(4) Without prejudice to subsection (3), where a Licensing Board grants a premises licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1)) as they consider necessary or expedient for the purposes of any of the licensing objectives.

(5) A Licensing Board may not impose a condition under subsection (4) which—

(a) is inconsistent with any condition—

(i) to which the premises licence is subject by virtue of subsection (1), or

(ii) prescribed under subsection (3),

(b) would have the effect of making any such condition more onerous or more restrictive, or

(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

(6) The conditions which may be—

(a) added under subsection (2)(a),

(b) prescribed under subsection (3), or

(c) imposed under subsection (4),

include, in particular, conditions of the kind described in subsection (7).

(7) Those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—
(a) the sale of alcohol on the premises in respect of which a premises licence has effect, or
(b) any other activity carried on in such premises.

(8) Where, under any provision of this Act, a Licensing Board has power to make a variation of the conditions to which a premises licence is subject, the power may not be exercised so as to have the effect of imposing a condition which the Board could not have imposed under this section on the granting of the licence.

**Duration of premises licence**

26 Period of effect of premises licence

(1) A premises licence—

(a) takes effect on such date as the Licensing Board issuing it may determine, and
(b) ceases to have effect on the occurrence of any of the events mentioned in subsection (5).

(2) However, a premises licence is not to be taken to have ceased to have effect under subsection (1)(b) by virtue of the occurrence of any of the events mentioned in paragraphs (c) to (e) of subsection (5) if, within 28 days of the occurrence of the event, an application for the transfer of the licence is made under section 32(1).

(3) If such an application is made but refused, the premises licence ceases to have effect on the refusal.

(4) A premises licence does not have effect for any period during which it is suspended by virtue of any provision of this Act.

(5) The events referred to in subsection (1)(b) are—

(a) the premises licence is revoked under any provision of this Act,
(b) the licensed premises in respect of which the licence was issued cease to be used for the sale of alcohol,
(c) the premises licence holder, being an individual—
   (i) dies, or
   (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
(d) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
(e) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
(f) the appropriate Licensing Board receives from the premises licence holder a notice under subsection (6).

(6) That is a notice—

(a) accompanied by the premises licence, or where that is not practicable, by a statement of reasons for failure to produce the licence, and
(b) stating that the licence holder wishes to surrender the licence.

(7) For the purposes of subsection (5)(d)—
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(a) an individual or partnership becomes insolvent on—
   (i) the approval of a voluntary arrangement proposed by the individual or
       partnership,
   (ii) being adjudged bankrupt,
   (iii) the individual’s or partnership’s estate being sequestrated,
   (iv) entering into a deed of arrangement made for the benefit of creditors, or
   (v) granting a trust deed for creditors, and

(b) a company becomes insolvent on—
   (i) the approval of a voluntary arrangement proposed by its creditors,
   (ii) the appointment of an administrator or administrative receiver in respect of
       it, or
   (iii) going into liquidation.

(8) An expression used in subsection (7) which is also used in the Bankruptcy (Scotland)
    Act 1985 (c.66) or the Insolvency Act 1986 (c.45) has the same meaning in that
    subsection as it has in that Act.

Variation of premises licence

27 Application to vary premises licence

(1) A premises licence holder may apply to the appropriate Licensing Board for a variation
    of the licence.

(2) An application under subsection (1) must be accompanied by—
   (a) the premises licence to which the application relates, or
   (b) if that is not practicable, a statement of the reasons for failure to produce the
       licence.

(3) An application under subsection (1) which complies with subsection (2) is referred to in
    this Act as a “premises licence variation application”.

(4) Sections 20(1) and (2) and 21 apply in relation to a premises licence variation
    application (other than one in which the only variation sought is a minor variation) as
    they apply to a premises licence application.

(5) In this Act, “variation”, in relation to a premises licence, means any variation of—
   (a) any of the conditions to which the licence is subject (other than those to which the
       licence is subject by virtue of section 25(1)),
   (b) any of the information contained in the operating plan contained in the licence,
   (c) the layout plan contained in the licence, or
   (d) any other information contained or referred to in the licence,
   and includes an addition, deletion or other modification.

(6) In this Act, “minor variation” means—
   (a) any variation reflecting any alteration or proposed alteration of the internal layout
       of the premises, if the alteration does not result in any significant change in the
       capacity of the premises,
Part 3—Premises licences

(b) where, under the operating plan contained in the licence, children or young persons are allowed entry to the premises, any variation reflecting any change or proposed change in the arrangements for allowing children or young persons entry to the premises,

(c) any variation of the information contained in the licence relating to the premises manager (including a variation so as to substitute a new premises manager), and

(d) any other variation of such description as may be prescribed for the purposes of this subsection.

28 Determination of application for variation

(1) A premises licence variation application received by a Licensing Board is to be determined by the Board in accordance with this section.

(2) If the variation sought is a minor variation, the Board must grant the application.

(3) In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.

(4) Where a hearing is held under subsection (3)—

(a) if none of the grounds for refusal is established, the Board must grant the application,

(b) if any of the grounds for refusal is established, the Board must refuse the application.

(5) The grounds for refusal are—

(a) that the Licensing Board considers that the granting of the application would be inconsistent with one or more of the licensing objectives,

(b) that, having regard to—

(i) the nature of the activities carried on or proposed to be carried on in the subject premises,

(ii) the location, character and condition of the premises, and

(iii) the persons likely to frequent the premises,

the Board considers that the premises are unsuitable for use for the sale of alcohol in accordance with the proposed variation,

(c) that, having regard to the number and capacity of—

(i) licensed premises, or

(ii) licensed premises of the same or similar description as the subject premises (taking account of the proposed variation),

in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.

(6) Where the Licensing Board grants the application, the Board may make a variation of the conditions to which the licence is subject.

(7) Where the Licensing Board refuses the application—

(a) the Board must specify the ground for refusal, and
(b) if the ground for refusal is that specified in subsection (5)(a), the Board must
specify the licensing objective or objectives in question.

(8) In subsection (5)(c), references to “licensed premises” do not include references to
licensed premises in respect of which an occasional licence has effect.

### Variation to substitute new premises manager

(1) This section applies in relation to a premises licence variation application where—
(a) the variation sought is the substitution of another individual as the premises
manager, and
(b) the applicant requests in the application that the variation should have immediate
effect.

(2) Where this section applies, the premises licence to which the application relates has
effect during the application period as if it were varied as proposed in the application.

(3) In subsection (2), “the application period” means the period—
(a) beginning when the application is received by the Licensing Board, and
(b) ending—
   (i) when the variation takes effect, or
   (ii) if the application is withdrawn before it is determined, when it is
       withdrawn.

### Further application after refusal of application for variation

(1) Subsection (2) applies where a Licensing Board has refused a premises licence variation
application (such a refusal being referred to in this section as the “earlier refusal”).

(2) Subject to subsection (3), the Board must refuse any subsequent premises licence
variation application—
(a) in respect of the same premises licence, and
(b) seeking the same variation,
made before the expiry of the period of one year beginning with the date of the earlier
refusal.

(3) Subsection (2) does not apply in relation to any subsequent application made during that
period if—
(a) at the time of the earlier refusal, the Board directed that the subsection would not
   apply to any subsequent application, or
(b) the Board is satisfied that there has been a material change of circumstances since
   the earlier refusal.

### Transfer of premises licence

#### Transfer on application of licence holder

(1) A premises licence holder may apply to the appropriate Licensing Board for the transfer
of the licence to such person as is specified in the application (such person being
referred to in this section as the “transferee”).
Part 3—Premises licences

(2) The transferee may not be an individual under the age of 18.

(3) An application under subsection (1) must be accompanied by—
   (a) the premises licence to which the application relates, or
   (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

(4) Where a Licensing Board receives an application under subsection (1), the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.

(5) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (4), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (6).

(6) Those notices are—
   (a) a notice stating that neither—
      (i) the transferee, nor
      (ii) where the transferee is a partnership or a company, any connected person,
           has been convicted of any relevant offence or foreign offence, or
   (b) a notice specifying any convictions of—
      (i) the transferee, and
      (ii) where the transferee is a partnership or a company, any connected person,
           for a relevant offence or a foreign offence.

(7) Where the appropriate chief constable—
   (a) proposes to give a notice under subsection (6)(b), and
   (b) considers that, having regard to any conviction to be specified in the notice, it is necessary for the purposes of the crime prevention objective that the application for transfer of the licence to the transferee be refused,

the chief constable may include in the notice a recommendation to that effect.

(8) Where the Licensing Board receives a notice under subsection (6)(a) in relation to an application under subsection (1), the Board must grant the application.

(9) Where the Licensing Board receives a notice under subsection (6)(b) in relation to an application under subsection (1), the Board must hold a hearing for the purpose of considering and determining the application.

(10) Where a hearing is held under subsection (9), the Licensing Board must, having regard to the chief constable’s notice—
   (a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or
   (b) if not so satisfied, grant the application.

Transfer on application of person other than licence holder

(1) A person other than—
   (a) the holder of a premises licence, or
(b) an individual under the age of 18,
(being a person of a prescribed description) may, within 28 days of the occurrence of any of the events specified in subsection (3), apply to the appropriate Licensing Board for the transfer to that person of the licence.

(2) An application under subsection (1) must be accompanied by—
(a) the premises licence to which the application relates, or
(b) if that is not practicable, a statement of the reasons for failure to produce the licence.

(3) The events referred to in subsection (1) are—
(a) the premises licence holder, being an individual—
   (i) dies, or
   (ii) becomes incapable within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000 (asp 4),
(b) the premises licence holder, being an individual, a partnership or a company, becomes insolvent,
(c) the premises licence holder, being a person other than an individual, a partnership or a company, is dissolved, and
(d) the business carried on in the licensed premises to which the licence relates is transferred (whether by sale or otherwise) to another person.

(4) Subsections (4) to (10) of section 31 apply for the purposes of an application under subsection (1) of this section as they apply for the purposes of an application under subsection (1) of that section, but as if references in them to the transferee were references to the applicant in relation to the application under subsection (1) of this section.

(5) Subsections (7) and (8) of section 26 apply for the purposes of subsection (3)(b) of this section as they apply for the purposes of subsection (5)(d) of that section.

33 Variation on transfer

(1) A person making an application to a Licensing Board under section 31(1) or 32(1) for transfer of a premises licence may also make an application to the Board for a variation of the licence.

(2) Sections 27 and 28 apply in relation to an application under subsection (1) for a variation as they apply to a premises licence variation application.

(3) Where—
(a) an application is made under subsection (1), and
(b) the applicant intimates to the Licensing Board that the application under section 31(1) or 32(1) for transfer of the premises licence is contingent on the grant of the application under subsection (1),
the Licensing Board must determine the application under subsection (1) before determining the application for the transfer of the licence.

(4) In such a case, if the Licensing Board refuses the application under subsection (1), the application for the transfer of the licence falls.
Part 3—Premises licences

34 Application for review of premises licence

(1) Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.

(2) An application under subsection (1) is referred to in this Act as a “premises licence review application”.

(3) The grounds for review referred to in subsection (1) are—

(a) that one or more of the conditions to which the premises licence is subject has been breached, or

(b) any other ground relevant to one or more of the licensing objectives.

(4) A Licensing Standards Officer may make a premises licence review application on the ground specified in subsection (3)(a) only if—

(a) in relation to the alleged ground for review, the Officer or any other Licensing Standards Officer has issued to the licence holder a notice under section 14(2)(a)(i), and

(b) the licence holder has failed to take the action specified in the notice to the satisfaction of the Officer.

(5) A premises licence review application must specify the alleged ground for review, including in particular—

(a) where the ground is that specified in subsection (3)(a), the condition or conditions alleged to have been breached,

(b) where the ground is that specified in subsection (3)(b), the licensing objective or objectives to which the alleged ground of review relates.

(6) The Licensing Board may reject a premises licence review application if the Board considers the application—

(a) is vexatious or frivolous, or

(b) does not disclose any matter relevant to any ground for review.

(7) Where the Licensing Board rejects a premises licence review application under subsection (6), the Board—

(a) must give notice of the decision, and the reasons for it, to the applicant, and

(b) where it is rejected on the ground that it is frivolous or vexatious, may recover from the applicant any expenses incurred by the Board in considering the application.

(8) In any proceedings by a Licensing Board for the recovery of expenses under subsection (7)(b), a copy of any minute of proceedings of the Licensing Board—
(b) certified by the clerk of the Board to be a true copy,
is sufficient evidence of the rejection and of the establishment of the grounds for rejection.

35 **Review of premises licence on Licensing Board’s initiative**

(1) The appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect may, on their own initiative, propose to review the licence on any of the grounds for review.

(2) A proposal under subsection (1) is referred to in this Act as a “premises licence review proposal”.

(3) The grounds for review referred to in subsection (1) are those specified in subsection 34(3).

(4) A premises licence review proposal must be made in writing and must specify the alleged ground for review, including in particular—

(a) where the ground is that specified in subsection 34(3)(a), the condition or conditions alleged to have been breached,

(b) where the ground is that specified in subsection 34(3)(b), the licensing objective or objectives to which the alleged ground of review relates.

36 **Review hearing**

(1) Where a Licensing Board—

(a) makes a premises licence review proposal, or

(b) receives a premises licence review application,
the Board must hold a hearing for the purposes of considering and determining the proposal or application unless, in the case of a premises licence review application, the Board has rejected the application under subsection 34(6).

(2) A hearing under subsection (1) is referred to in this Act as a “review hearing”.

(3) Where a review hearing is to be held, the Licensing Board must—

(a) in the case of a premises licence review application, give notice of the hearing to the applicant, and

(b) give notice of the hearing and a copy of the premises licence review proposal or application to—

(i) the licence holder, and

(ii) any Licensing Standards Officer for the area in which the premises concerned are situated, unless, in the case of a premises licence review application, the applicant is such an Officer.

(4) Where a Licensing Standards Officer receives under subsection (3)(b)(ii) a copy of a premises licence review proposal or application—

(a) the Officer must, before the review hearing, prepare and submit to the Licensing Board a report on the proposal or application, and
(b) the Licensing Board must take the report into account at the hearing.

(5) The Licensing Board may, for the purposes of the review hearing—

(a) obtain further information from such persons, and in such manner, as the Board thinks fit, and

(b) take the information into account.

(6) In particular, the Board may—

(a) request—

(i) the attendance at the review hearing of any person for the purpose of providing information, and

(ii) the production at the review hearing by any person of any documents in that person’s possession or under that person’s control, and

(b) take into account any information relevant to any ground for review even though it is not relevant to any circumstances alleged in the review proposal or application under consideration.

37 Licensing Board’s powers on review

(1) At a review hearing in relation to any premises licence, the Licensing Board may, if satisfied that a ground for review is established (whether or not on the basis of any circumstances alleged in the premises licence review proposal or application considered at the hearing) take such of the steps mentioned in subsection (2) as the Board considers necessary or appropriate for the purposes of any of the licensing objectives.

(2) Those steps are—

(a) to issue a written warning to the licence holder,

(b) to make a variation of the licence,

(c) to suspend the licence for such period as the Board may determine,

(d) to revoke the licence.

(3) On making a variation under subsection (2)(b), the Board may provide for the variation to apply only for such period as they may determine.

38 Review of Licensing Board’s decision to vary or suspend licence

Where a Licensing Board has made a variation under subsection (2)(b) of section 37 or suspended the licence under subsection (2)(c) of that section, the Board may—

(a) on the application of the licence holder, and

(b) if satisfied that, by reason of a change of circumstances, the variation or suspension is no longer necessary,

revoke the variation or suspension.

39 Duty to notify court of premises licence

(1) Subsection (2) applies where—
(a) a person who holds a premises licence is charged with a relevant offence, or
(b) a person charged with a relevant offence is granted a premises licence after the person’s first appearance in court in connection with the offence but before—
   (i) conviction and sentencing for the offence or acquittal, or
   (ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.

(2) The person must, not later than the person’s first appearance or, as the case may be, next appearance in court in connection with the offence—
   (a) produce to the court the premises licence, or
   (b) if that is not practicable, notify the court of—
       (i) the existence of the premises licence,
       (ii) the identity of the Licensing Board which issued it, and
       (iii) the reasons why it is not practicable to produce the licence.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### 40 Court’s duty to notify Licensing Board of convictions

(1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a premises licence.

(2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the premises licence held by the person convicted.

### 41 Licence holder’s duty to notify Licensing Board of convictions

(1) This section applies where any of the persons specified in subsection (2)—
   (a) is convicted of a relevant offence by or before a court in Scotland, or
   (b) is convicted of a foreign offence.

(2) Those persons are—
   (a) the holder of a premises licence, and
   (b) where—
       (i) the holder of such a licence is a company or a partnership, or
       (ii) the premises in respect of which such a licence is held are used wholly or mainly for the purposes of a club,
           any connected person.

(3) The holder of the premises licence must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board which issued the premises licence held by the licence holder.

(4) A notice of conviction under subsection (3) must—
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(a) specify—
   (i) the nature of the offence, and
   (ii) the date of conviction, and
(b) be accompanied by—
   (i) the premises licence held by the licence holder, or
   (ii) if that is not practicable, a statement of the reasons for failure to produce
the licence.

(5) A premises licence holder who fails, without reasonable excuse, to comply with
subsection (3) commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a
fine not exceeding level 3 on the standard scale.

42 Procedure where Licensing Board receives notice of conviction

(1) This section applies where the Licensing Board which issued a premises licence receives
a notice of conviction relating to—
   (a) the holder of the licence, or
   (b) where—
      (i) the holder of the licence is a partnership or a company, or
      (ii) the premises in respect of which the licence is held are used wholly or
mainly for the purposes of a club,

   a connected person.

(2) The Licensing Board must give notice of the conviction to the appropriate chief
constable.

(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice
under subsection (2), respond to the notice by giving the Licensing Board one or other
of the notices mentioned in subsection (4).

(4) Those notices are—
   (a) a notice stating that the chief constable is unable to confirm the existence of the
conviction or that the conviction does not relate to a relevant or foreign offence, or
   (b) a notice confirming the existence of the conviction and that it relates to a relevant
or foreign offence.

(5) Where the chief constable—
   (a) proposes to give a notice under subsection (4)(b), and
   (b) considers that, having regard to the conviction specified in the notice, it is
necessary for the purposes of the crime prevention objective that the premises
licence should be varied, suspended or revoked,

the chief constable may include in the notice a recommendation to that effect.

(6) If the Licensing Board receives from the appropriate chief constable a notice under
subsection (4)(a), the Licensing Board may not take any further action in relation to the
conviction.
(7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must make a premises licence review proposal in respect of the premises licence.

(8) In this section, “notice of conviction” means a notice under section 40(2) or 41(3).

Premises under construction or conversion

43 Provisional premises licence

(1) A premises licence application may be made in relation to any premises despite the fact that, at the time the application is made, the premises are yet to be, or are in the course of being, constructed or converted for use as licensed premises.

(2) A premises licence application in respect of any such premises is referred to in this Act as a “provisional premises licence application”.

(3) A premises licence issued in respect of any such premises does not take effect unless and until it is confirmed by the Licensing Board which issued it in accordance with section 44.

(4) If a premises licence issued in respect of any such premises is not confirmed before the end of the provisional period, then at the end of that period the licence is treated as revoked.

(5) A premises licence—

(a) to which subsection (3) applies, and

(b) which has not been confirmed in accordance with section 44,

is referred to in this Act as a “provisional premises licence”.

(6) The provisional period, in relation to a provisional premises licence, is the period of 2 years beginning with the date of issue of the licence.

(7) On the application of the holder of a provisional premises licence made before the expiry of the provisional period, the Licensing Board which issued the licence may, if satisfied as to the matter mentioned in subsection (8), extend the provisional period by such period as the Board considers appropriate.

(8) That matter is that—

(a) completion of the construction or conversion of the premises to which the licence relates has been delayed, and

(b) the delay has been caused by factors outwith the premises licence holder’s control.

(9) Where the provisional period in relation to any provisional premises licence has been extended under subsection (7), references in this section and section 44 to the provisional period are to that period as so extended.

(10) Section 19 has effect in relation to a provisional premises licence application as if—

(a) in subsection (2)(b), for sub-paragraph (iii) there were substituted—

“(iii) the certificate required by section 48(2),”, and

(b) in subsection (4), paragraph (d) were omitted.

(11) In this section, “construct” and “convert” have the same meanings as they have for the purposes of the Building (Scotland) Act 2003 (asp 8).
44 Confirmation of provisional premises licence

(1) The holder of a provisional premises licence may, at any time before the expiry of the provisional period in relation to the licence, apply to the Licensing Board which issued the licence for confirmation of the licence.

(2) An application under subsection (1) must be accompanied by—

(a) the provisional premises licence,

(b) the operating plan for the premises to which the licence relates,

(c) the layout plan for the premises, and

(d) the certificates required by section 48(3).

(3) The operating plan referred to in subsection (2)(b) must, in particular and without prejudice to subsection (4) of section 19, contain a statement of the information specified in paragraph (d) of subsection (4) of that section.

(4) Where a Licensing Board which issued a provisional premises licence receives an application under subsection (1) in respect of the licence, the Board must, if satisfied as to the matters mentioned in subsection (5), confirm the licence.

(5) Those matters are that—

(a) since the provisional premises licence was issued, or

(b) if, since that time, an application for a variation of the licence has been granted under section 28, since the last such application was granted,

there has been no variation (other than a minor variation) made to the operating plan or layout plan for the premises to which the licence relates.

(6) Where a Licensing Board confirms a provisional premises licence under subsection (4), the Board may, for the purpose specified in subsection (7), make a variation of the conditions to which the licence is subject.

(7) That purpose is ensuring consistency with any licensing policy statement or supplementary licensing policy statement published since the licence was issued.

45 Temporary premises licence

(1) This section applies where any licensed premises (other than premises in respect of which a provisional premises licence or occasional licence has effect) are undergoing, or are to undergo, reconstruction or conversion (referred to in this section as the “principal premises”).

(2) The appropriate Licensing Board in relation to the principal premises may—

(a) on the application of the holder of the premises licence in respect of the premises, and

(b) if satisfied as to the matters mentioned in subsection (3),

issue to the applicant a premises licence in respect of such other premises within the Licensing Board’s area as are specified in the application (such premises being referred to in this section as the “temporary premises”).

(3) The matters referred to in subsection (2)(b) are—

(a) that the temporary premises are suitable for use for the sale of alcohol, and
(b) that it is necessary to grant the application to enable the applicant to carry on business pending reconstruction or conversion of the principal premises.

(4) A premises licence issued under subsection (2) is referred to in this Act as a “temporary premises licence”.

(5) A temporary premises licence—

(a) has effect for such period of not more than 2 years beginning with the date of its issue as the Licensing Board may determine, and

(b) is subject to the same conditions as those to which the premises licence in respect of the principal premises is subject at the time the temporary premises licence is issued, with such exceptions or variations (if any) as the Licensing Board considers appropriate.

(6) The Licensing Board may, on the application of the holder of a temporary premises licence, extend the period during which it has effect for such further period of not more than 12 months as they may determine.

(7) In this section—

“conversion” has the same meaning as it has for the purposes of the Building (Scotland) Act 2003 (asp 8), and

“reconstruction” includes alteration, re-erection and extension.

Updating of licence

46 Notification of change of name or address

(1) A premises licence holder must, not later than one month after the occurrence of any change in—

(a) the licence holder’s name or address, or

(b) the name or address of the premises manager specified in the licence,

give the appropriate Licensing Board notice of the change.

(2) A notice under subsection (1) must be accompanied by the premises licence or, if that is not practicable, by a statement of the reasons for the failure to produce the licence.

(3) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1), commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

47 Licensing Board’s duty to update premises licence

(1) Subsection (2) applies where a Licensing Board—

(a) receives a notice under section 46(1) in relation to a premises licence,

(b) grants a premises licence variation application or otherwise makes a variation of a premises licence,

(c) grants an application under section 31(1) or 32(1) for the transfer of a premises licence,

(d) in relation to a provisional premises licence, grants—
(i) an application under section 43(7) for an extension of the provisional period, or
(ii) an application under section 44(1) for confirmation of the licence,
(c) in relation to a temporary premises licence, grants an application under section 45(6) for an extension of the period during which the licence has effect, or
(f) on reviewing a premises licence, takes any of the steps referred to in section 37(1).

(2) The Board must make any necessary amendments to the licence and, if necessary, issue a new summary of the licence.

(3) Where a Licensing Board is not in possession of a premises licence and—
(a) the licence has ceased to have effect under any provision of this Act, or
(b) the Board requires the licence for the purpose of complying with the duty under subsection (2),
the Board may require the licence holder to produce the licence to the Board within 14 days from the date on which the requirement is notified.

(4) A licence holder who, without reasonable excuse, fails to comply with a requirement made under subsection (3), commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Miscellaneous

48 Certificates as to planning, building standards and food hygiene

(1) A premises licence application (other than a provisional premises licence application) must be accompanied by—
(a) a planning certificate,
(b) a building standards certificate, and
(c) if food is to be supplied on the premises, a food hygiene certificate,
in respect of the subject premises.

(2) A provisional premises licences application must be accompanied by a provisional planning certificate in respect of the subject premises.

(3) An application under section 44(1) in respect of any premises must be accompanied by—
(a) if the provisional planning certificate which accompanied the provisional premises licence application in respect of the subject premises consisted of outline planning permission, a planning certificate,
(b) a building standards certificate, and
(c) if food is to be supplied on the premises, a food hygiene certificate,
in respect of the subject premises.

(4) A planning certificate is a certificate signed on behalf of the appropriate authority and stating—
(a) that planning permission under the Town and Country Planning (Scotland) Act 1997 (c.8) (referred to in this section as “the 1997 Act”) in respect of any development of the subject premises in connection with their proposed use as licensed premises has been obtained, or
(b) that no such planning permission is required.

(5) A provisional planning certificate is a certificate signed on behalf of the appropriate authority and stating—
(a) that planning permission or outline planning permission under the 1997 Act has been obtained in respect of the construction or conversion of the subject premises, or
(b) that no such planning permission is required.

(6) A building standards certificate is a certificate signed on behalf of the appropriate authority and stating—
(a) that a completion certificate has been accepted under section 18 of the Building (Scotland) Act 2003 (asp 8) (referred to in this section as “the 2003 Act”) in respect of any construction or conversion of the subject premises in connection with their proposed use as licensed premises,
(b) that permission for the temporary occupation or use of the premises has been granted under section 21(3) of the 2003 Act, or
(c) that no such completion certificate or permission is required.

(7) A food hygiene certificate is a certificate signed on behalf of the appropriate authority and stating that the subject premises comply with the requirements of regulations made under section 16 of the Food Safety Act 1990 (c.16) (referred to in this section as “the 1990 Act”) relating to construction, layout, drainage, ventilation, lighting and water supply or concerned with the provision of sanitary and washing facilities.

(8) In this section—
“appropriate authority” means—
(a) in relation to a planning certificate or provisional planning certificate, the planning authority (within the meaning of the 1997 Act) for the area in which the subject premises are situated,
(b) in relation to a building standards certificate, the council for that area,
(c) in relation to a food hygiene certificate, the food authority (within the meaning of the 1990 Act) for that area,
“construction” and “conversion” have the same meanings as they have in the 2003 Act,
“development” has the same meaning as it has in the 1997 Act.

49 Duty to keep, display and produce premises licence

(1) A premises licence holder must secure that the premises licence, or a certified copy of it, is kept at the premises in respect of which it is issued in the custody or under the control of—
(a) the licence holder, or
(b) the premises manager.
(2) A premises licence holder must secure that the summary of the licence, or a certified copy of the summary, is prominently displayed on the premises so as to be capable of being read by anyone frequenting the premises.

(3) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) or (2) commits an offence.

(4) Any of the persons specified in subsection (5) may require the person in whose custody or under whose control a premises licence (or a certified copy of it) is kept by virtue of subsection (1) to produce the licence (or certified copy) for inspection.

(5) The persons referred to in subsection (4) are—
   (a) a constable, and
   (b) a Licensing Standards Officer for the council area in which the premises are situated.

(6) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (4) commits an offence.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

50 Theft, loss etc. of premises licence or summary

(1) This section applies where the appropriate Licensing Board receives from a premises licence holder an application for a replacement premises licence or a replacement summary.

(2) If satisfied that—
   (a) the premises licence held by the licence holder or, as the case may be, the summary of it has been lost, stolen, damaged or destroyed, and
   (b) where it has been lost or stolen, the licence holder has reported the loss or theft to the police,

the Licensing Board must issue to the licence holder a replacement licence or, as the case may be, a replacement summary.

(3) A replacement licence or a replacement summary is a copy of the licence or summary—
   (a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and
   (b) certified by the Board to be a true copy.

(4) In this Act, references to—
   (a) a premises licence include references to a replacement premises licence,
   (b) a summary of a premises licence include references to a replacement summary,

issued under this section.

51 Dismissal, resignation, death etc. of premises manager

(1) This section applies where any of the events specified in subsection (2) occurs in relation to any licensed premises in respect of which a premises licence has effect.

(2) Those events are—
(a) the premises manager ceases to work at the premises,
(b) the premises manager dies, or
(c) the personal licence held by the premises manager is revoked or suspended.

(3) The premises licence holder must, not later than 7 days after the occurrence of the event, give notice of it to the appropriate Licensing Board.

(4) Subsection (5) applies if—
(a) subsection (3) is complied with, and
(b) within the period of 6 weeks beginning with the day on which the event occurs, a premises licence variation application is made seeking a variation of the premises licence in respect of the premises so as to substitute another individual as the premises manager.

(5) Any breach of the conditions specified in paragraphs 4 and 5 of schedule 3 in the period beginning with the occurrence of the event and ending with the receipt by the Licensing Board of the application referred to in subsection (4)(b) is, so far as it is attributable to the occurrence of the event, to be disregarded.

(6) If no such application as is mentioned in paragraph (b) of subsection (4) is made within the period mentioned in that paragraph, then, at the end of that period, the Licensing Board must vary the premises licence so that there is no longer any premises manager specified in it.

52 Certified copies
Any reference in this Part to a certified copy of a premises licence or of a summary of such a licence is a reference to a copy of the licence or summary certified to be a true copy by—
(a) the Licensing Board,
(b) a solicitor or notary public, or
(c) a person of a prescribed description.

PART 4
OCCASIONAL LICENCES

53 Occasional licence

(1) A Licensing Board may, on the application of any of the persons mentioned in subsection (2) made in relation to any premises (other than licensed premises) within the Board’s area, issue to the applicant a licence (referred to in this Act as an “occasional licence”) authorising the sale of alcohol on the premises.

(2) Those persons are—
(a) the holder of a premises licence,
(b) the holder of a personal licence, and
(c) a representative of any voluntary organisation.

(3) An application under subsection (1) must contain details of the information which the applicant proposes should be included in the licence under subsection (7)(b).
An application under subsection (1) which complies with subsection (3) is referred to in this Act as an “occasional licence application”.

An occasional licence has effect for such period of not more than 14 days as the Licensing Board may determine.

A Licensing Board may issue under subsection (1) in respect of any one voluntary organisation in any period of 12 months—

(a) not more than 4 occasional licences each having effect for a period of 4 days or more, and

(b) not more than 12 occasional licences each having effect for a period of less than 4 days,

provided that, in any period of 12 months, the total number of days on which occasional licences issued in respect of the organisation have effect does not exceed 56.

An occasional licence issued by a Licensing Board under subsection (1) must—

(a) be in the prescribed form, and

(b) contain the information specified in subsection (8).

That information is—

(a) the name and address of the holder of the licence,

(b) a description of the premises in respect of which it is issued,

(c) a description of the activities to be carried on in the premises,

(d) a statement of the period during which the licence has effect,

(e) a statement of the times during which alcohol may be sold on the premises,

(f) a statement as to whether alcohol may be sold for consumption on the premises, off the premises or both,

(g) the conditions to which the licence is subject, or, in relation to any such condition, a reference to another document in which details of the condition can be found, and

(h) such other information as may be prescribed.

Notification of application to chief constable

(1) Where a Licensing Board receives an occasional licence application, the Board must give notice of it, together with a copy of the application, to the appropriate chief constable.

(2) If the chief constable considers that it is necessary for the purposes of the crime prevention objective that the application be refused, the chief constable may, by notice to the Licensing Board given within 21 days of the date of receipt of the notice under subsection (1), make a recommendation to that effect.

Objections and representations

(1) Where an occasional licence application is made to a Licensing Board, any person may by notice in writing to the Licensing Board—

(a) object to the application on any ground relevant to one of the grounds for refusal specified in section 56(6), or

(b) make representations to the Board concerning the application, including, in particular, representations—
   (i) in support of the application, or
   (ii) as to conditions which the person considers should be imposed.

(2) Where a Licensing Board receives a notice of objection or representation under subsection (1) relating to any occasional licence application made to the Board, the Board must—
   (a) give a copy of the notice to the applicant in such manner and by such time as may be prescribed, and
   (b) have regard to the objection or representation in determining the application, unless the Board rejects the notice under subsection (3).

(3) A Licensing Board may reject a notice of objection or representation received by the Board under subsection (1) if the objection or representation is frivolous or vexatious.

(4) Where a Licensing Board rejects a notice of objection or representation under subsection (3), the Board may recover from the person who gave the notice any expenses incurred by the Board in considering the notice.

(5) In any proceedings by a Licensing Board for the recovery of expenses under subsection (4), a copy of any minute of proceedings of the Licensing Board—
   (a) recording the Board’s rejection of the notice and the grounds for rejection, and
   (b) certified by the clerk of the Board to be a true copy,
   is sufficient evidence of the rejection and of the establishment of the ground for rejection.

56 Determination of application

(1) An occasional licence application received by a Licensing Board is to be determined in accordance with this section.

(2) If the Board has not received any—
   (a) notice from the appropriate chief constable under section 54(2), or
   (b) notice of objection or representation under section 55(1),
   relating to the application, the Board must grant the application.

(3) In any other case, the Board must consider whether any of the grounds for refusal is established and—
   (a) if none of the grounds for refusal is established, the Board must grant the application, or
   (b) if any of the grounds for refusal is established, the Board must refuse the application.

(4) The Board may hold a hearing for the purposes of determining any application which is to be determined in accordance with subsection (3).

(5) Where the Board does not hold a hearing for that purpose, the Board must ensure that, before determining the application, the applicant is given an opportunity to comment on any such notice as is referred to in subsection (2).
The grounds for refusal are—

(a) that the premises to which the application relates are excluded premises,
(b) that the Licensing Board considers the granting of the application would be inconsistent with one or more of the licensing objectives,
(c) that, having regard to—
   (i) the nature of the activities proposed to be carried on in the premises to which the application relates,
   (ii) the location, character and condition of the premises, and
   (iii) the persons likely to frequent the premises,
   the Board considers that the premises are unsuitable for use for the sale of alcohol.

In considering, for the purposes of the ground for refusal specified in subsection (6)(b), whether the granting of the application would be inconsistent with the crime prevention objective, the Licensing Board must, in particular, take into account any notice given by the appropriate chief constable under section 54(2).

The Licensing Board must give the following persons notice of their determination in relation to the application—

(a) the applicant,
(b) the appropriate chief constable, and
(c) any person who has given a notice of objection or representation under section 55(1).

Conditions of occasional licence

Except to the extent that schedule 4 provides otherwise, every occasional licence is subject to the conditions specified in that schedule.

The Scottish Ministers may by regulations modify schedule 4 so as—

(a) to add such further conditions as they consider necessary or expedient for the purposes of any of the licensing objectives, or
(b) to extend the application of any condition specified in the schedule.

The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of occasional licences.

Without prejudice to subsection (3), where a Licensing Board grants an occasional licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1)) as they consider necessary or expedient for the purposes of any of the licensing objectives.

A Licensing Board may not impose a condition under subsection (4) which—

(a) is inconsistent with any condition—
   (i) to which the occasional licence is subject by virtue of subsection (1), or
   (ii) prescribed under subsection (3),
(b) would have the effect of making any such condition more onerous or more restrictive, or
(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment.

(6) The conditions which may be—

(a) added under subsection (2)(a),

(b) prescribed under subsection (3), or

(c) imposed under subsection (4),

include, in particular, conditions of the kind described in subsection (7).

(7) Those are conditions requiring anything to be done, or prohibiting or restricting the doing of anything, in connection with—

(a) the sale of alcohol on the premises in respect of which an occasional licence has effect, or

(b) any other activity carried on in such premises.

### PART 5

**LICENSED HOURS**

**58 Licensed hours**

(1) In this Act, “licensed hours” means, in relation to licensed premises—

(a) in the case of licensed premises in respect of which a premises licence has effect, the period or periods of time specified for the time being in the operating plan contained in the premises licence as those during which alcohol is to be sold on the premises, and

(b) in the case of licensed premises in respect of which an occasional licence has effect, the period or periods of time specified in the licence as those during which alcohol may be sold on the premises,

and a reference to a period of licensed hours is a reference to any of those periods of time.

(2) Nothing in this Act is to be read as requiring any licensed premises to be open for the sale of alcohol during licensed hours.

**59 Prohibition of sale, consumption and taking away of alcohol outwith licensed hours**

(1) Subject to subsection (2), a person commits an offence if, outwith licensed hours, the person—

(a) sells alcohol, or allows alcohol to be sold, on licensed premises,

(b) allows alcohol to be consumed on licensed premises, or

(c) allows alcohol to be taken from licensed premises.

(2) It is not an offence under subsection (1) for a person to—

(a) allow alcohol to be consumed on licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol was sold during that period,
(b) allow alcohol to be taken from licensed premises at any time within 15 minutes of the end of any period of licensed hours if the alcohol—
   (i) was sold during that period, and
   (ii) is not taken from the premises in an open container,

(c) allow alcohol to be consumed on or taken from licensed premises outwith licensed hours if the person consuming or taking the alcohol—
   (i) resides on the premises, or
   (ii) is a guest of a person who resides there,

(d) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to a person who resides on the premises,

(e) allow alcohol to be consumed on licensed premises at a meal at any time within 30 minutes of the end of any period of licensed hours if the alcohol was sold—
   (i) during that period,
   (ii) at the same time as the meal, and
   (iii) for consumption at the meal,

(f) sell alcohol or allow alcohol to be sold on licensed premises outwith licensed hours if the alcohol is sold to—
   (i) a person who is a trader for the purposes of the person’s trade, or
   (ii) a person for supply to or on any premises which are occupied for the purposes of the armed forces of the Crown.

(3) It is a defence for a person (“the accused”) charged with an offence under subsection (1) of allowing alcohol to be consumed on or taken from any licensed premises outwith licensed hours to prove—

   (a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised all due diligence not to commit the offence, or
   (b) that there were no lawful and reasonably practicable means by which the accused could prevent the person consuming or taking the alcohol on or from the premises from so doing.

(4) A person commits an offence if, having been requested by a responsible person not to do so, the person consumes alcohol on, or takes alcohol from, licensed premises outwith licensed hours.

(5) In subsection (4), “responsible person” means—

   (a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,
   (b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
   (c) in either case, any person who works on the premises in a capacity (whether paid or unpaid) which authorises the person to make the request mentioned in subsection (4).

(6) Nothing in this section prevents or restricts—

   (a) the ordering of alcohol for consumption off licensed premises, or
(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

60 24 hour licences to be granted only in exceptional circumstances

(1) Subsection (2) applies where, in relation to any premises—
   (a) an application is made to a Licensing Board for—
       (i) a premises licence in respect of the premises,
       (ii) a variation of such a licence, or
       (iii) an occasional licence in respect of the premises, and
   (b) if the application were to be granted, the licensed hours in relation to the premises would be such as to allow alcohol to be sold on the premises during a continuous period of 24 hours or more.

(2) 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.

61 Effect of start and end of British Summer Time

(1) Subsection (2) applies in relation to any period of licensed hours—
   (a) during which, or
   (b) at the end of which,
   British Summer Time is due to begin or end.
(2) The beginning or, as the case may be, ending of British Summer Time is to be disregarded for the purpose of determining the time at which that period of licensed hours ends and, accordingly, the period ends at the time it would have ended had British Summer Time not begun or ended.

(3) In this section, “British Summer Time” means the period of summer time for the purposes of the Summer Time Act 1972 (c.6).

PART 6
PERSONAL LICENCES

Introductory

62 Personal licence

In this Act, “personal licence”, in relation to an individual, means a licence—
   (a) issued to the individual by a Licensing Board under section 67(1) of this Act, and
   (b) authorising the individual to supervise or authorise the sale of alcohol.
Grant and renewal of personal licence

63  Application for personal licence

(1) Any individual aged 18 years or more may apply for a personal licence to—
   (a) if the individual is ordinarily resident in the area of any Licensing Board, that
       Board, or
   (b) in any other case, any Licensing Board.

(2) An application under subsection (1) is referred to in this Act as a “personal licence
    application”.

64  Notification of application to chief constable

(1) Where a Licensing Board receives a personal licence application, the Board must give
    notice of it, together with a copy of the application, to the appropriate chief constable.

(2) The appropriate chief constable must, within 21 days of the date of receipt of a notice
    under subsection (1), respond to the notice by giving the Licensing Board one or other
    of the notices mentioned in subsection (3).

(3) Those notices are—
   (a) a notice stating that, as far as the chief constable is aware, the applicant has not
       been convicted of any relevant offence or foreign offence, or
   (b) a notice specifying any convictions of the applicant for any such offence.

(4) Where the chief constable—
   (a) proposes to give a notice under subsection (3)(b), and
   (b) considers that, having regard to any conviction to be specified in the notice, it is
       necessary for the purposes of the crime prevention objective that the personal
       licence application be refused,

       the chief constable may include in the notice a recommendation to that effect.

65  Determination of personal licence application

(1) A personal licence application received by a Licensing Board is to be determined by the
    Board in accordance with this section.

(2) If—
   (a) all of the conditions specified in subsection (3) are met in relation to the applicant,
       and
   (b) the Board has received from the appropriate chief constable a notice under section
       64(3)(a),

       the Board must grant the application.

(3) The conditions referred to in subsection (2)(a) are that—
   (a) the applicant is aged 18 or over,
   (b) the applicant possesses a licensing qualification, and
   (c) no personal licence previously held by the applicant has been revoked within the
       period of 5 years ending with the day on which the application was received.
(4) If any of those conditions is not met in relation to the applicant, the Licensing Board must refuse the application.

(5) If—
  (a) all of those conditions are met in relation to the applicant, and
  (b) the Board has received from the appropriate chief constable a notice under section 64(3)(b),
the Licensing Board must hold a hearing for the purpose of considering and determining the application.

(6) At a hearing under subsection (5), the Licensing Board must, after having regard to the chief constable’s notice—
  (a) if satisfied that it is necessary to do so for the purposes of the crime prevention objective, refuse the application, or
  (b) if not so satisfied, grant the application.

66 Applicant’s duty to notify Licensing Board of convictions

(1) This section applies where, during the period beginning with the making of a personal licence application and ending with determination of the application, the applicant is convicted of a relevant offence or a foreign offence.

(2) The applicant must, no later than one month after the date of the conviction, give notice of the conviction to the Licensing Board to which the personal licence application was made.

(3) A notice under subsection (2) must specify—
  (a) the nature of the offence, and
  (b) the date of the conviction.

(4) Where the Licensing Board receives a notice under subsection (2) at any time before they have determined the personal licence application, the Board must—
  (a) suspend consideration of the application, and
  (b) give notice of the conviction to the appropriate chief constable.

(5) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (4)(b), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (6).

(6) Those notices are—
  (a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant offence or foreign offence, or
  (b) a notice confirming the existence of the conviction and that it relates to a relevant offence or foreign offence.

(7) Where the chief constable—
  (a) proposes to give a notice under subsection (6)(b), and
  (b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the personal licence application be refused,
(8) On receipt of the chief constable’s notice under subsection (6), the Licensing Board must resume consideration of the personal licence application and determine it in accordance with section 65.

(9) For that purpose, that section has effect as if—

(a) references in it to a notice under section 64(3)(a) included references to a notice under subsection (6)(a) of this section, and

(b) references in it to a notice under section 64(3)(b) included references to a notice under subsection (6)(b) of this section.

(10) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

(11) A person guilty of an offence under subsection (10) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

67 Issue of licence

(1) Where a Licensing Board grants a personal licence application, the Board must issue a personal licence, in the prescribed form, to the applicant.

(2) A personal licence issued under subsection (1) must specify—

(a) the name and address of the individual to whom it is issued,

(b) the Licensing Board issuing the licence,

(c) the expiry date of the licence,

(d) any relevant offence or foreign offence of which the applicant has been convicted, and

(e) such other matters as may be prescribed.

(3) A personal licence is void if, at the time it is issued under subsection (1), the individual to whom it is issued already holds a personal licence.

68 Period of effect of personal licence

(1) A personal licence has effect, subject to the following provisions of this section, during the period of 10 years beginning with the date on which it is issued.

(2) That period, and any subsequent extension of it under this subsection, is extended for a further period of 10 years if a personal licence renewal application is granted in respect of the licence.

(3) A personal licence does not have effect for any period during which it is suspended by virtue of any provision of this Act.

(4) Subsection (3) does not affect the calculation of the period during which a personal licence has effect by virtue of subsection (1) as read with subsection (2).

(5) A personal licence ceases to have effect if—

(a) the licence is revoked under any provision of this Part, or

(b) the Licensing Board which issued the licence receives from the personal licence holder a notice under subsection (6).
(6) That is a notice—
   (a) accompanied by the personal licence or, where that is not practicable, by a statement of reasons for failure to produce the licence, and
   (b) stating that the licence holder wishes to surrender the licence.

(7) The date of expiry of the period during which a personal licence has effect is referred to in this Act as the “expiry date” of the licence.

(8) Not later than 3 months before the expiry date of a personal licence, the Licensing Board which issued the licence must give notice to the licence holder that the licence will cease to have effect on the expiry date unless renewed.

### 69 Renewal of personal licence

(1) The holder of a personal licence may, within the period specified in subsection (2), apply to the Licensing Board which issued the licence for renewal of the licence.

(2) The period referred to in subsection (1) is the period of 2 months beginning 3 months before the expiry date of the licence.

(3) An application under subsection (1) must be accompanied by—
   (a) the personal licence to which it relates, or
   (b) if that is not practicable, a statement of the reasons for failure to produce the licence.

(4) An application under subsection (1) which complies with subsection (3) is referred to in this Act as a “personal licence renewal application”.

(5) Sections 64 and 65 apply to a personal licence renewal application as they apply to a personal licence application.

(6) For that purpose, references in those sections to a personal licence application are to be read as if they included reference to a personal licence renewal application.

### 70 Notification of determinations

(1) This section applies where a Licensing Board grants or refuses—
   (a) a personal licence application, or
   (b) a personal licence renewal application.

(2) The Board must give—
   (a) the applicant, and
   (b) the appropriate chief constable, notice of the grant or refusal of the application.

(3) Where—
   (a) the Board grants the application, and
   (b) the appropriate chief constable had given a notice of objection in relation to the application,
   the notice given by the Board to the chief constable under subsection (2)(b) must include a statement of reasons for granting the application.
(4) Where the Board refuses the application, the notice given by the Board under subsection (2) to—

(a) the applicant, and

(b) the appropriate chief constable,

must include a statement of reasons for refusing it.

(5) In subsection (3)(b), “notice of objection” means a notice—

(a) under subsection (3)(b) of section 64 containing a recommendation under subsection (4) of that section, or

(b) under subsection (6)(b) of section 66 containing a recommendation under subsection (7) of that section.

Conviction of licence holder for relevant or foreign offence

71 Duty to notify court of personal licence

(1) Subsection (2) applies where—

(a) a person who holds a personal licence is charged with a relevant offence, or

(b) a person charged with a relevant offence is granted a personal licence after the person’s first appearance in court in connection with the offence but before—

(i) conviction and sentencing for the offence or acquittal, or

(ii) where an appeal is brought against conviction, sentence or acquittal, the disposal of the appeal.

(2) The person must, no later than the person’s first or, as the case may be, next appearance in court in connection with the offence—

(a) produce to the court the personal licence, or

(b) if that is not practicable, notify the court of—

(i) the existence of the personal licence,

(ii) the identity of the Licensing Board which issued the licence, and

(iii) the reasons why it is not practicable to produce the licence.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

72 Court’s duty to notify Licensing Board of convictions

(1) This section applies where the clerk of a court in Scotland by or before which a person is convicted of a relevant offence is aware that the person holds a personal licence.

(2) The clerk of the court must, as soon as reasonably practicable after the conviction, give notice of the conviction to the Licensing Board which issued the personal licence held by the licence holder.

(3) Where—
(a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and
(b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),

the receiving Board must give notice of the conviction to the other Board.

73 Licence holder’s duty to notify Licensing Board of convictions

(1) This section applies where a personal licence holder—

(a) is convicted of a relevant offence by or before a court in Scotland, or
(b) is convicted of a foreign offence.

(2) The licence holder must, no later than one month after the date of the conviction, give notice of the conviction to—

(a) the Licensing Board which issued the personal licence held by the licence holder, and
(b) if different, the Licensing Board for the area in which are situated any licensed premises in which the licence holder is working.

(3) A notice of conviction under subsection (2) must—

(a) specify—

(i) the nature of the offence, and
(ii) the date of the conviction, and
(b) be accompanied by—

(i) the personal licence held by the licence holder, or
(ii) if that is not practicable, a statement of the reasons for failure to produce the licence.

(4) Where—

(a) a Licensing Board receives a notice under subsection (2) (“the receiving Board”), and
(b) that Board has reason to believe that the personal licence holder in respect of whom the notice is given is working in licensed premises situated in the area of another Licensing Board (“the other Board”),

the receiving Board must give notice of the conviction to the other Board.

(5) A licence holder who fails, without reasonable excuse, to comply with subsection (2) commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

74 Procedure where Licensing Board receives notice of conviction

(1) Subsection (2) applies where the relevant Licensing Board—

(a) receives a notice of conviction relating to a personal licence holder, or
(b) becomes aware that a personal licence holder was, during the application period, convicted of a relevant offence or a foreign offence.

(2) The Licensing Board must give notice of the conviction to the appropriate chief constable.

(3) The appropriate chief constable must, within 21 days of the date of receipt of a notice under subsection (2), respond to the notice by giving the Licensing Board one or other of the notices mentioned in subsection (4).

(4) Those notices are—

(a) a notice stating that the chief constable is unable to confirm the existence of the conviction or that the conviction does not relate to a relevant or a foreign offence, or

(b) a notice confirming the existence of the conviction and that it relates to a relevant or a foreign offence.

(5) Where the appropriate chief constable—

(a) proposes to give a notice under subsection (4)(b), and

(b) considers that, having regard to the conviction specified in the notice, it is necessary for the purposes of the crime prevention objective that the licence holder’s personal licence should be revoked, suspended or endorsed,

the chief constable may include in the notice a recommendation to that effect.

(6) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(a), the Licensing Board may not take any further action in relation to the conviction.

(7) If the Licensing Board receives from the appropriate chief constable a notice under subsection (4)(b), the Licensing Board must hold a hearing.

(8) At the hearing, the Licensing Board may—

(a) having regard to—

(i) the conviction, and

(ii) any recommendation contained in the chief constable’s notice under subsection (5),

(b) after giving—

(i) the licence holder concerned, and

(ii) the appropriate chief constable,

an opportunity to be heard, and

(c) if satisfied that it is necessary to do so for the purposes of the crime prevention objective,

make an order under subsection (9).

(9) That order is an order—

(a) revoking,

(b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or

(c) endorsing,
the personal licence held by the licence holder concerned.

(10) Where the Licensing Board makes an order under subsection (9), the Board must give—

(a) the licence holder concerned,
(b) the appropriate chief constable, and
(c) if different, the Licensing Board which issued the personal licence,
notice of the order and of the reasons for making it.

(11) In this section—

“the application period” means, in relation to a personal licence holder, the period—

(a) beginning with the date on which the application for the personal licence held by that licence holder was made, and
(b) ending with the date on which that application was granted,

“notice of conviction” means a notice under section 72(2) or 73(2), and

“relevant Licensing Board” means, in relation to a personal licence holder—

(c) if the personal licence holder is working as a premises manager at any licensed premises, the Licensing Board for the area in which those premises are situated,
(d) in any other case, the Licensing Board which issued the personal licence held by the licence holder.

Conduct inconsistent with licensing objectives

75 Conduct inconsistent with the licensing objectives

(1) This section applies where, in the course of a review hearing in respect of any premises licence, a Licensing Board makes a finding such as is mentioned in subsection (2) in relation to any personal licence holder who is or was working in the licensed premises in respect of which the premises licence was issued (“the licensed premises concerned”).

(2) That finding is a finding that the licence holder concerned, while working as mentioned in subsection (1), acted in a manner which was inconsistent with any of the licensing objectives.

(3) The Licensing Board making the finding must—

(a) if the licence holder concerned is, at the time of the finding, working in licensed premises (whether the licensed premises concerned or other licensed premises) in that Board’s area, hold a hearing,
(b) in any other case, give notice to the relevant Licensing Board of their finding together with a recommendation as to whether the personal licence held by the licence holder concerned should be revoked, suspended or endorsed.

(4) In subsection (3)(b), “relevant Licensing Board” means—

(a) if the Licensing Board making the finding referred to in subsection (1) has reason to believe that the licence holder concerned is working at licensed premises situated in the area of another Licensing Board, that other Licensing Board,
(b) in any other case, the Licensing Board which issued the personal licence held by the licence holder concerned.

(5) Where a Licensing Board receives a notice and recommendation under subsection (3)(b), the Board must hold a hearing.

(6) At a hearing under subsection (3)(a) or (5), the Licensing Board may—

(a) after giving—

(i) the licence holder concerned, and

(ii) such other persons as they consider appropriate,

an opportunity to be heard, and

(b) if satisfied that it is necessary to do so for the purposes of any of the licensing objectives,

make an order under subsection (7).

(7) That is an order—

(a) revoking,

(b) suspending for such period, not exceeding 6 months, as the Board considers appropriate, or

(c) endorsing,

the personal licence held by the licence holder concerned.

(8) Where the Licensing Board makes an order under subsection (7), the Board must give—

(a) the licence holder concerned,

(b) where the hearing was held in pursuance of a notice given under subsection (3)(b), the Licensing Board which gave the notice, and

(c) if different, the Licensing Board which issued the personal licence,

notice of the order and of the reasons for making it.

Endorsements

76 Expiry of endorsements

(1) In this section and section 77, “endorsement” means an endorsement made in a personal licence by virtue of an order under—

(a) section 74(9)(c), or

(b) section 75(7)(c).

(2) An endorsement expires at the end of the period of 5 years beginning with the date on which the endorsement was made.

(3) The holder of a personal licence containing an endorsement which has expired under subsection (2) may apply to the Licensing Board which issued the licence for removal of the endorsement.

(4) An application under subsection (3) must be accompanied by the personal licence to which it relates.
(5) Where a Licensing Board receives an application under subsection (3) in relation to any personal licence, the Board must amend the licence so as to remove the endorsement from it.

(6) For the purposes of this Act, any endorsement which has expired under subsection (2) is to be disregarded (whether or not the endorsement has been removed under subsection (5)).

77 Suspension of licence after multiple endorsements

(1) Where 3 endorsements have been made in any personal licence, the Licensing Board which issued the licence must hold a hearing.

(2) At the hearing, the Licensing Board may—

(a) after giving—

(i) the holder of the licence, and

(ii) such other persons as the Board considers appropriate,

an opportunity to be heard, and

(b) if they consider it necessary to do so for the purposes of any of the licensing objectives,

make an order under subsection (3).

(3) That is an order—

(a) suspending the licence for such period, not exceeding 6 months, as the Board considers appropriate, or

(b) revoking the licence.

(4) Where the Licensing Board makes an order under subsection (3), the Board must give the licence holder notice of the order and of the reasons for making it.

78 Licence holder’s duty to undertake training

(1) The holder of a personal licence must, no later than 3 months after the expiry of—

(a) the period of 5 years beginning with the date on which the licence holder’s licence was issued, and

(b) each subsequent period of 5 years during which the licence has effect,

produce to the Licensing Board which issued the licence evidence in the prescribed form of the licence holder’s having complied, during that period, with such requirements as to the training of personal licence holders as may be prescribed.

(2) A Licensing Board must—

(a) in relation to each personal licence issued by it, and

(b) no later than 3 months before the expiry of each period mentioned in subsection (1),

give to the holder of the licence notice of the requirement imposed by that subsection.
(3) If a personal licence holder fails to comply with subsection (1), the Licensing Board which issued the licence held by the licence holder must revoke the licence.

(4) Regulations under subsection (1) prescribing training requirements may, in particular—
   (a) provide for accreditation by the Scottish Ministers of—
      (i) courses of training, and
      (ii) persons providing such courses,
      for the purposes of the regulations,
   (b) prescribe different requirements in relation to different descriptions of personal licence holder, and
   (c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

**Update of licence**

79 Notification of change of name or address

(1) A personal licence holder must, no later than one month after any change in the licence holder’s name or address, give the Licensing Board which issued the licence notice of the change.

(2) A notice under subsection (1) must be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to produce the licence.

(3) A personal licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

80 Licensing Board’s duty to update licence

(1) In this section, the “issuing Licensing Board” means, in relation to a personal licence, the Licensing Board which issued the licence.

(2) Where the issuing Licensing Board grants a personal licence renewal application made in respect of any personal licence, the Board must make the necessary amendment to the expiry date specified in the licence.

(3) Where a personal licence is suspended by virtue of any provision in this Act, the issuing Licensing Board must amend the licence so as to specify in it—
   (a) the date, and
   (b) period,
   of the suspension.

(4) Where the issuing Licensing Board receives a notice of conviction in relation to any personal licence holder, the Board must amend the personal licence held by the licence holder so as to specify in it—
   (a) the date of the conviction, and
   (b) the nature of the offence,
unless the Board has already done so by virtue of any previous such notice.

(5) Where the issuing Licensing Board—
   (a) makes an order under section 74(9)(c) or 75(7)(c) in relation to any personal licence holder, or
   (b) receives notice under section 74(10)(c) or 75(8)(c) of such an order made by another Licensing Board,
the Board must amend the personal licence held by the licence holder so as to include in it a statement that it is endorsed together with the details of the conviction or conduct giving rise to the making of the order.

(6) Where the issuing Licensing Board receives a notice under section 79(1) from a personal licence holder, the Board must amend the personal licence of the licence holder so that it specifies the licence holder’s new name or address.

(7) Where the issuing Licensing Board receives evidence of training produced by a personal licence holder in accordance with section 78(1), the Board must amend the personal licence held by the licence holder so as to include in it the prescribed details of the training.

(8) Where the issuing Licensing Board is not in possession of a personal licence and—
   (a) the licence has been revoked under any provision of this Act, or
   (b) the Board requires the licence for the purpose of complying with any duty under this section in relation to the licence,
the Board may require the holder of the licence to produce it to the Board within 14 days from the date on which the requirement is notified.

(9) A personal licence holder who fails, without reasonable excuse, to comply with a requirement made under subsection (8) commits an offence.

(10) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) In this section, “notice of conviction” means a notice under section 72(2) or 73(2).

Miscellaneous

81 Power to specify which Licensing Board is to exercise functions under this Part

(1) The Scottish Ministers may by order provide for any function exercisable under this Part by a Licensing Board of a particular description to be exercisable instead by a Licensing Board of such other description as may be specified in the order.

(2) An order under subsection (1) may—
   (a) modify this Act, and
   (b) make different provision in relation to different functions.

82 Power to prescribe licensing qualifications

(1) In this Act, “licensing qualification” means—
   (a) such qualification, or
   (b) a qualification of such description,
as may be prescribed.

(2) Regulations under subsection (1) may, in particular—

(a) prescribe qualifications or descriptions of qualifications by reference to whether they are—

(i) accredited, or

(ii) awarded by a person who is accredited,

for the purposes of this section by the Scottish Ministers in accordance with the regulations,

(b) prescribe qualifications or descriptions of qualifications awarded outwith Scotland (as well as qualifications awarded within Scotland),

(c) prescribe different qualifications in relation to different licensed premises or licensed premises of different descriptions, and

(d) prescribe such qualifications as the appropriate licensing qualifications in relation to those descriptions of licensed premises for the purposes of paragraph 4(2) of schedule 3.

83 Theft, loss etc. of personal licence

(1) This section applies where the Licensing Board which issued a personal licence receives from the holder of the licence an application for a replacement personal licence.

(2) If satisfied that—

(a) the personal licence held by the applicant has been lost, stolen, damaged or destroyed, and

(b) where it has been lost or stolen, the applicant has reported the loss or theft to the police,

the Licensing Board must issue to the applicant a replacement personal licence.

(3) A replacement personal licence is a copy of the personal licence held by the applicant—

(a) in the form in which it existed immediately before it was lost, stolen, damaged or destroyed, and

(b) certified by the Board to be a true copy.

(4) In this Act, references to a personal licence include references to a replacement personal licence issued under this section.

84 Licence holder’s duty to produce licence

(1) This section applies where the holder of a personal licence is working at any licensed premises.

(2) A constable or Licensing Standards Officer may, at any time when the licence holder is on the licensed premises, require the licence holder to produce the licence for examination.

(3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (2) commits an offence.
(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**PART 7**

**CONTROL OF ORDER**

**Exclusion of violent offenders**

**85 Exclusion orders**

(1) This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises in respect of which a premises licence has effect (referred to in this section and section 87 as “the licensed premises concerned”).

(2) The court by or before which the person is convicted of the offence may, in addition to any sentence imposed or other disposal in respect of the offence, make an order prohibiting the person from entering—

(a) the licensed premises concerned, and

(b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.

(3) The holder of the premises licence in respect of the licensed premises concerned may, by summary application to the sheriff of the appropriate sheriffdom made no later than 6 weeks after the date of the conviction, seek an order prohibiting the person convicted from entering the licensed premises concerned except with the appropriate consent.

(4) On such an application, the sheriff, if satisfied that—

(a) there is a substantial risk that the person convicted will commit a further violent offence on, or in the immediate vicinity of, the licensed premises concerned, and

(b) an order has not been made under subsection (2) in relation to the person in respect of the same conviction,

may grant the order sought.

(5) For the purposes of an application under subsection (3), where the sheriff is satisfied that the person to whom the application relates has been convicted as mentioned in subsection (1), it is to be presumed, unless the contrary is proved, that the risk referred to in subsection (4)(a) exists.

(6) An order under subsection (2) or (4) is referred to in this Act as an “exclusion order”.

(7) An exclusion order has effect, subject to section 86(3), for such period, being not less than 3 months and not more than 2 years, as is specified in the order.

(8) In this section—

“the appropriate consent” means, in relation to any licensed premises, the express consent of—

(a) the premises licence holder in respect of the premises, or

(b) a person authorised by the premises licence holder to give consent for the purposes of this section,
“the appropriate sheriffdom” means the sheriffdom in which the licensed premises concerned are situated,

“violent offence” means any offence involving violence or the threat of violence.

86 Breach of exclusion order

(1) A person who enters licensed premises in breach of an exclusion order commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
   (a) a fine not exceeding level 4 on the standard scale,
   (b) imprisonment for a term not exceeding one month, or
   (c) both.

(3) The court by or before which a person is convicted of an offence under subsection (1) may, if it thinks fit, terminate the exclusion order or vary it so as to delete any licensed premises specified in it.

(4) Where, in relation to any licensed premises, the premises licence holder reasonably suspects a person of having entered the premises in breach of an exclusion order, the premises licence holder may—
   (a) remove the person from the premises, and
   (b) if necessary for that purpose, use reasonable force.

(5) A constable must, if—
   (a) asked by a premises licence holder to assist in exercising a power conferred by subsection (4), and
   (b) the constable reasonably suspects the person to be removed of having entered the premises in breach of an exclusion order,

provide the assistance asked for.

87 Exclusion orders: supplementary provision

(1) References in section 85 to a person’s being convicted of an offence are, in the case mentioned in subsection (2), to be read as references to the court’s being satisfied that the person committed the offence.

(2) That case is the case where—
   (a) the person is charged with the offence before a court of summary jurisdiction, and
   (b) the court, without proceeding to conviction, discharges the person absolutely under section 246(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

(3) Where—
   (a) a court or the sheriff makes an exclusion order, or
   (b) a court makes an order terminating or varying an exclusion order,

the clerk of the court or, as the case may be, the sheriff clerk must send a copy of the order to the premises licence holder in respect of the licensed premises concerned.
Closure of premises

88 Closure orders

(1) A Licensing Board may—

(a) on the application of a senior police officer relating to any licensed premises situated within the Board’s area, and

(b) if satisfied that, by reason of the likelihood of disorder on, or in the vicinity of the premises, closure of the premises is necessary in the interests of public safety,

make a closure order in relation to the premises.

(2) A senior police officer may, if the officer reasonably believes that—

(a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,

(b) closure of the premises is necessary in the interests of public safety, and

(c) the risk to public safety is such that it is necessary to do so immediately and without making an application under subsection (1),

make a closure order in relation to the premises.

(3) A closure order is an order requiring the licensed premises to which it relates to be closed for such period, beginning with the coming into force of the order, as may be specified in the order.

(4) A closure order made by a senior police officer under subsection (2) is referred to as an “emergency closure order”.

(5) The period of closure specified in an emergency closure order must not exceed 24 hours.

(6) A closure order comes into force in relation to any licensed premises when a constable gives notice of it to a responsible person.

(7) Any responsible person who allows any licensed premises to be open in breach of a closure order commits an offence.

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to—

(a) a fine not exceeding £20,000,

(b) imprisonment for a term not exceeding 3 months, or

(c) both.

89 Termination of closure orders

(1) A senior police officer must terminate a closure order (whether or not an emergency closure order) relating to any licensed premises if the officer is satisfied that it is no longer necessary in the interests of public safety for the premises to be closed.

(2) Where a senior police officer terminates a closure order relating to any licensed premises, the officer must ensure that notice of the termination is given by a constable to—

(a) a responsible person, and

(b) in the case of a closure order made by a Licensing Board, the Board.

(3) A Licensing Board may—
(a) on the application of the holder of the premises licence or, as the case may be, occasional licence in respect of any licensed premises to which a closure order made by the Board relates, and
(b) if satisfied that it is no longer necessary in the interests of public safety for the premises to be closed,

terminate the closure order.

90 Extension of emergency closure order

(1) Where an emergency closure order is in effect in respect of any licensed premises, a senior police officer may—

(a) before the expiry of the period during which the order has effect (referred to in this section as the “original closure period”), and
(b) if the officer reasonably believes that the conditions mentioned in subsection (2) are met in relation to the premises,

extend the original closure period for a further period not exceeding 24 hours.

(2) The conditions referred to in subsection (1)(b) are—

(a) that there continues to be, or is likely to continue to be, disorder on, or in the vicinity of, the premises,
(b) that extending the original closure period is necessary in the interests of public safety, and
(c) the risk to public safety continues to be such that it is necessary to extend the original closure period immediately and without making an application under section 88(1).

(3) An extension under subsection (1) has no effect in relation to any licensed premises unless a constable has, before expiry of the original closure period, given notice of the extension to a responsible person.

91 Regulations as to closure orders

The Scottish Ministers may by regulations make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders including, in particular, provision—

(a) as to the form and manner in which—

(i) any application under this Part is to be made,
(ii) any notice under this Part is to be given,
(b) as to the form of closure orders,
(c) for the holding of hearings by Licensing Boards before making closure orders or extensions to them.

92 Interpretation of sections 88 to 91

In sections 88 to 91—

“responsible person” means—

(a) in the case of premises in respect of which a premises licence has effect—
(i) the premises licence holder, or
(ii) the premises manager,
(b) in the case of premises in respect of which an occasional licence has effect, the person who holds the occasional licence, and
(c) in either case, any person working at the premises in a capacity (whether paid or unpaid) which authorises the person to close the premises, and

“senior police officer” means a constable of or above the rank of superintendent.

PART 8
OFFENCES

93 Sale of alcohol to a child or young person
(1) A person who sells alcohol to a child or a young person commits an offence.
(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
(a) the accused believed the child or young person to be aged 18 or over, and
(b) either—
(i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
(ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.

(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
(a) the accused was shown any of the documents mentioned in subsection (4), and
(b) that document would have convinced a reasonable person.

(4) The documents referred to in subsection (3)(a) are any document bearing to be—
(a) a passport,
(b) a European Union photocard driving licence, or
(c) such other document, or a document of such other description, as may be prescribed.

(5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

94 Allowing the sale of alcohol to a child or young person
(1) Any responsible person who knowingly allows alcohol to be sold to a child or a young person on any relevant premises commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
95 Sale of liqueur confectionery to a child

(1) A person who knowingly sells liqueur confectionery to a child commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—

(a) the accused believed the child to be aged 16 or over, and

(b) either—

(i) the accused had taken reasonable steps to establish the child’s age, or

(ii) no reasonable person could have suspected from the child’s appearance that the child was aged under 16.

(3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s age if and only if—

(a) the accused was shown evidence of the child’s age, and

(b) that evidence would have convinced a reasonable person.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

96 Purchase of alcohol by or for a child or young person

(1) A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence.

(2) A person other than a child or young person who knowingly buys or attempts to buy alcohol—

(a) on behalf of a child or young person, or

(b) for consumption on relevant premises by a child or young person, commits an offence.

(3) Subsection (2)(b) does not apply to the buying of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

97 Consumption of alcohol by a child or young person

(1) A child or young person who knowingly consumes alcohol on any relevant premises commits an offence.

(2) Any responsible person who knowingly allows a child or young person to consume alcohol on any relevant premises commits an offence.

(3) Subsections (1) and (2) do not apply to the consumption of beer, wine, cider or perry by a young person along with a meal supplied on relevant premises.

(4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
(5) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

98 Unsupervised sale of alcohol by a child or young person

(1) Any responsible person who knowingly allows alcohol to be sold, supplied or served by a child or young person on any relevant premises commits an offence.

(2) Subsection (1) does not apply to—
   (a) any sale by a child or young person of alcohol for consumption off the premises, or
   (b) any supply or service by a child or young person of alcohol for consumption on the premises along with a meal supplied on relevant premises,

if the condition in subsection (3) is satisfied.

(3) That condition is that the sale, supply or service is specifically authorised by—
   (a) a responsible person, or
   (b) any other person of or over 18 years of age who is authorised by a responsible person for the purposes of this section.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

99 Delivery of alcohol by or to a child or young person

(1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.

(2) Any responsible person who knowingly allows the alcohol to be delivered by a child or young person commits an offence.

(3) Any responsible person who knowingly—
   (a) delivers the alcohol, or
   (b) allows it to be delivered,

   to a child or young person commits an offence.

(4) Subsections (2) and (3) do not apply to the delivery of the alcohol by or to a child or young person who works on the relevant premises or at the place where the delivery is made in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

(5) Subsection (3) does not apply where the delivery is made to—
   (a) where the person buying the alcohol is an individual, a place where that individual lives or works, or
   (b) where the person buying the alcohol is not an individual, a place of business of that person.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
100 Sending a child or young person to obtain alcohol

(1) Any person who knowingly sends a child or young person to obtain alcohol sold or to be sold on any relevant premises for consumption off the premises commits an offence.

(2) It is immaterial for the purposes of subsection (1) whether the child or young person is sent to obtain the alcohol from the relevant premises where it is sold or from some other place from which it is to be delivered.

(3) Subsection (1) does not apply where the child or young person works on the relevant premises or at the place where the alcohol is to be delivered in a capacity (whether paid or unpaid) which involves the delivery of alcohol.

(4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

101 Duty to display notice

(1) This section applies in relation to any relevant premises.

(2) The notice mentioned in subsection (3) must be displayed—

(a) at all times,

(b) at each place on the premises where sales of alcohol are made, and

(c) in a position where it is readily visible to any person seeking to buy alcohol.

(3) That is a notice in the prescribed form and of the prescribed dimensions containing the following statements, namely—

“It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises.

It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18.

Where there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over.”.

(4) If the requirement in subsection (2) is not met in relation to any premises, the person specified in subsection (5) commits an offence.

(5) That person is, in relation to any relevant premises—

(a) in the case of licensed premises—

(i) the premises licence holder, and

(ii) the premises manager,

(b) in the case of premises in respect of which an occasional licence has effect, the holder of the licence,

(c) in the case of exempt premises, the person having the management and control of the premises, and

(d) in the case of wholesale premises, the wholesaler.

(6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
Drunkenness and disorderly conduct

102 Drunk persons entering or in premises on which alcohol is sold

(1) A person who, while drunk, attempts to enter any relevant premises (other than premises on which the person resides) commits an offence.

(2) A person commits an offence if the person, while drunk—
   (a) is on any relevant premises, and
   (b) is incapable of taking care of himself or herself.

(3) A constable may arrest without warrant any person committing an offence under this section.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

103 Obtaining of alcohol by or for a drunk person

(1) A person who, on any relevant premises, obtains or attempts to obtain alcohol for consumption on the premises by a person who is drunk commits an offence.

(2) A person who, on any relevant premises, helps a person who is drunk to obtain or consume alcohol on the premises commits an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

104 Sale of alcohol to a drunk person

(1) Any responsible person who, on any relevant premises, sells alcohol to a person who is drunk commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

105 Premises manager, staff etc. not to be drunk

(1) Any responsible person in relation to any relevant premises who is drunk while on the premises commits an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

106 Disorderly conduct

(1) A person on relevant premises who, while drunk—
   (a) behaves in a disorderly manner, or
   (b) uses obscene or indecent language to the annoyance of any person, commits an offence.

(2) Any responsible person in relation any relevant premises who allows—
   (a) a breach of the peace,
   (b) drunkenness, or
(c) other disorderly conduct,
to take place on the premises commits an offence.

(3) It is a defence for a person charged with an offence under subsection (2) (“the accused”) to prove—

(a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised due diligence not to commit the offence, or

(b) that there were no lawful and reasonably practicable means by which the accused could prevent the conduct giving rise to the offence.

(4) A person guilty of an offence under subsection (1)(a) is liable on summary conviction to—

(a) a fine not exceeding level 3 on the standard scale,

(b) imprisonment for a term not exceeding 60 days, or

(c) both.

(5) A person guilty of an offence under subsection (1)(b) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

107 Refusal to leave premises

(1) A person on any relevant premises who—

(a) behaves in a disorderly manner, and

(b) refuses or fails to leave the premises on being asked to do so by a responsible person or a constable,

commits an offence.

(2) A person on any relevant premises who, after the end of any period of licensed hours, refuses or fails to leave the premises on being asked to do so by a responsible person or a constable commits an offence.

(3) A constable may assist in the removal from any relevant premises of a person who refuses or fails to leave the premises as mentioned in subsection (1) or (2).

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous offences

108 Offences relating to sale of alcohol by wholesale

(1) A wholesaler who sells alcohol by wholesale otherwise than from premises which are used exclusively for the purpose of such sales commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In this section, “wholesaler” includes an employee or agent of a wholesaler.

109 Prohibition of sale of alcohol on moving vehicles

(1) A person who knowingly sells alcohol on or from a vehicle at a time when the vehicle is not parked (whether permanently or temporarily) commits an offence.
(2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  (a) a fine not exceeding £20,000,
  (b) imprisonment for a term not exceeding 3 months, or
  (c) both.

110 Delivery of alcohol from vehicles etc.

(1) A person who, pursuant to a sale of alcohol by that person, delivers the alcohol from a vehicle or receptacle without the information mentioned in subsection (2) having been entered, before the despatch of the alcohol, in—
  (a) a day book kept on the premises from which the alcohol is despatched, and
  (b) a delivery book or invoice carried by the person delivering the alcohol, commits an offence.

(2) The information referred to in subsection (1) is—
  (a) the quantity, description and price of the alcohol, and
  (b) the name and address of the person to whom it is to be delivered.

(3) A person who carries in a vehicle or receptacle in use for the delivery of alcohol pursuant to a sale of the alcohol by that person any alcohol the quantity, description and price of which was not entered as mentioned in subsection (1) commits an offence.

(4) A person who, pursuant to a sale of alcohol, delivers the alcohol to an address not entered as mentioned in subsection (1) commits an offence.

(5) A person who refuses to allow a constable or a Licensing Standards Officer to examine—
  (a) any vehicle or receptacle in use for the delivery of alcohol, or
  (b) any—
    (i) day book kept as mentioned in subsection (1)(a), or
    (ii) delivery book or invoice carried as mentioned in subsection (1)(b), commits an offence.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In this section, “alcohol” does not include any alcohol being delivered to a trader for the purposes of that person’s trade.

111 Carriage of alcohol on public service vehicles

(1) If, in relation to a public service vehicle, the PSV licence holder or an employee or agent of the PSV licence holder knowingly allows more than 3.5 litres of alcohol to be carried on the vehicle while it is being used for the carriage of passengers otherwise than at separate fares, the licence holder or, as the case may be, employee or agent commits an offence.

(2) Where an employee or agent of a PSV licence holder is guilty of an offence under subsection (1), the PSV licence holder is also guilty of the offence, unless the licence holder proves that—
(a) the offence was committed without the consent or connivance of the licence holder, and

(b) the licence holder exercised all due diligence to prevent commission of the offence.

(3) Any person who procures or attempts to procure the commission of an offence under subsection (1) commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In this section—

“public service vehicle” has the meaning given in the Public Passenger Vehicles Act 1981 (c.14), and

“the PSV licence holder”, in relation to such a vehicle, means the holder of a PSV operator’s licence (within the meaning of that Act) in respect of the vehicle.

112 Prohibition of late-night deliveries of alcohol

(1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.

(2) A responsible person commits an offence if the person knowingly delivers the alcohol to any premises (other than licensed premises) between the hours of midnight and 6am.

(3) A responsible person who knowingly allows the alcohol to be so delivered commits an offence.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

113 Keeping of smuggled goods

(1) Any responsible person who knowingly keeps or allows to be kept on licensed premises any goods which—

(a) have been imported without any duty payable on their importation having been paid, or

(b) have otherwise been unlawfully imported,

commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The court by or before which a person is convicted of an offence under subsection (1) may order the goods in question to be—

(a) forfeited, and

(b) destroyed or otherwise dealt with in such manner as the court may order.

Interpretation of Part

114 Interpretation of Part 8

(1) This section has effect for the purpose of the interpretation of this Part.
(2) “Relevant premises” means—
   (a) any licensed premises,
   (b) any exempt premises on which alcohol is sold, and
   (c) any wholesale premises, that is to say any premises used exclusively for the sale of alcohol by wholesale.

(3) “Responsible person” means, in relation to relevant premises—
   (a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,
   (b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
   (c) in the case of exempt premises, the person having management and control of the premises,
   (d) in the case of wholesale premises, the wholesaler, and
   (e) in any of those cases, any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which—
      (i) authorises the person to sell alcohol, or
      (ii) in relation to any offence under this Part of allowing something to be done, authorises the person to prevent the doing of the thing.

PART 9
MISCELLANEOUS AND GENERAL

115 Excluded premises

(1) No premises licence or occasional licence has effect to authorise the sale of alcohol on excluded premises.

(2) For the purposes of this Act, “excluded premises” means—
   (a) premises on land—
      (i) acquired or appropriated by a special roads authority, and
      (ii) for the time being used,
      for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class 1 (with or without other classes), and
   (b) premises used primarily as a garage or which form part of premises which are primarily so used.

(3) For the purposes of subsection (2)(a)—
   (a) “special road” and “special roads authority” have the same meanings as in the Roads (Scotland) Act 1984 (c.54), and
   (b) “class 1” means class 1 in Schedule 3 to that Act, as varied from time to time by an order under section 8 of that Act, but, if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in this section to traffic of class 1 so as to take account of the additional class.
(4) For the purposes of subsection (2)(b), premises are used primarily as a garage if they are used for one or more of the following—
   (a) the sale by retail of petrol or derv,
   (b) the sale of motor vehicles, or
   (c) the maintenance of motor vehicles.

(5) The Scottish Ministers may by order amend the definition of “excluded premises” in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

116 Exempt premises

(1) Each of the following are exempt premises for the purposes of this Act—
   (a) an examination station at an airport designated for the purposes of this section in an order made by the Scottish Ministers,
   (b) an approved wharf at a port or hoverport so designated,
   (c) an aircraft, a hovercraft or a railway vehicle while engaged on a journey,
   (d) a vessel while engaged on an international journey, and
   (e) premises which are occupied for the purposes of the armed forces of the Crown.

(2) The Scottish Ministers may make an order under subsection (1) designating an airport, port or hoverport for the purposes of this section only if it appears to them to be one at which there is a substantial amount of international passenger traffic.

(3) For the purpose of subsection (1), the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged in a journey includes—
   (a) any period ending with its departure when preparations are being made for the journey, and
   (b) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it).

(4) In this section—
   “approved wharf” has the meaning given in section 20A of the Customs and Excise Management Act 1979 (c.2),
   “examination station” has the meaning given in section 22A of that Act,
   “international journey” means—
     (a) a journey from a place in the United Kingdom to an immediate destination outside the United Kingdom, or
     (b) a journey from a place outside the United Kingdom to an immediate destination in the United Kingdom,
   “railway vehicle” has the meaning given in section 83 of the Railways Act 1993 (c.43).
Special provision for certain clubs

117 Special provisions for certain clubs

(1) The provisions of this Act mentioned in subsection (2) do not apply in relation to premises which are used wholly or mainly for the purposes of any club of such description as may be prescribed.

(2) Those provisions are—

(a) section 7 (assessments of overprovision),

(b) section 19(4)(d) (requirement for operating plan to contain information as to the premises manager),

(c) section 22(5)(d) (ground of refusal of premises licence application relating to overprovision),

(d) section 24(2)(a)(ii) (requirement for name and address of premises manager to be specified in premises licence),

(e) section 28(5)(c) (ground of refusal of premises licence variation application relating to overprovision),

(f) in schedule 3—

(i) paragraph 4 (requirement for there to be a premises manager for licensed premises), and

(ii) paragraph 5 (requirement for sales of alcohol under premises licence to be authorised by a personal licence holder), and

(g) in schedule 4, paragraph 4 (requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder).

(3) Different descriptions of clubs may be prescribed under subsection (1) in relation to different provisions specified in subsection (2).

(4) The Scottish Ministers may by regulations provide for this Act to apply in relation to—

(a) clubs of such descriptions as may be prescribed in the regulations, or

(b) premises used wholly or mainly for the purposes of such clubs, subject to such further modifications as may be so prescribed.

(5) Regulations under subsection (1) or (4) may prescribe a description of club by reference to—

(a) requirements as to the constitution of the club, including, in particular, requirements as to—

(i) membership of the club, and

(ii) the rules of the club, and

(b) such other factors as the Scottish Ministers consider appropriate.

Vessels, vehicles and moveable structures

118 Vessels, vehicles and moveable structures

(1) A vessel which is not permanently moored or berthed is to be treated for the purposes of this Act as premises situated in the place where it is usually moored or berthed.
(2) Where a vehicle or moveable structure which is not permanently situated in any place is, or is to be, used for the sale of alcohol while parked at or set in any place—
   (a) it is to be treated for the purposes of this Act as premises situated at that place, and
   (b) each such place at which it is, or is to be, so used is to be treated as separate premises.

119 Power to prohibit sale of alcohol on trains

(1) A sheriff may—
   (a) on the application of a senior police officer, and
   (b) if satisfied that it is necessary to do so to prevent disorder,

make an order under subsection (2).

(2) That is an order prohibiting, during such period as may be specified in the order, the sale of alcohol on any railway vehicle—
   (a) at such station or stations within the sheriff’s sheriffdom as may be so specified, or
   (b) whilst travelling between such stations as may be so specified, at least one of which is in that sheriffdom.

(3) An order under subsection (2) has no effect in relation to any railway vehicle unless a copy of it has been given by a senior police officer to the train operator (or each train operator) responsible for the vehicle.

(4) A person who knowingly—
   (a) sells or attempts to sell alcohol in breach of an order under subsection (2), or
   (b) allows the sale of alcohol in breach of such an order,

commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to—
   (a) a fine not exceeding £20,000,
   (b) imprisonment for a term not exceeding 3 months, or
   (c) both.

(6) In this section—

“railway vehicle” has the meaning given in section 83 of the Railways Act 1993 (c.43),
“senior police officer” means a constable of or above the rank of inspector,
“station” has the meaning given in section 83 of the Railways Act 1993, and
“train operator” means a person authorised by a licence under section 8 of that Act to operate railway assets (within the meaning of section 6 of that Act).

Relevant and foreign offences

120 Relevant offences and foreign offences

(1) In this Act, “relevant offence” means—
(a) such offence, or
(b) an offence of such description,
as may be prescribed.

(2) In this Act, “foreign offence” means any offence—
(a) under the law of any place other than Scotland, and
(b) which is similar in nature to any relevant offence.

(3) For the purposes of this Act, a conviction for a relevant offence or a foreign offence is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (c.53).

121 Effect of appeal against conviction for relevant or foreign offence

(1) The fact that any conviction of any person for a relevant offence or foreign offence is subject to appeal does not affect the taking of any action by a Licensing Board which the Board is entitled or required to take in connection with the conviction by virtue of any provision of this Act.

(2) The Licensing Board may, however, postpone the taking of the action for such period as the Board considers appropriate pending the appeal.

(3) Where the conviction is overturned on appeal—
(a) any action taken by the Licensing Board in reliance on the conviction is to be treated as having no effect, and
(b) accordingly, the Licensing Board must take such steps as are necessary to return any applicant or licence holder adversely affected by the action to the position the applicant or licence holder would have been in had the action not been taken.

(4) A conviction is subject to appeal for the purposes of subsection (1) if—
(a) the period during which an appeal may be taken against the conviction has not yet expired, or
(b) an appeal is taken against the conviction and the appeal has not yet been determined.

Appeals

122 Appeals

(1) A person making an application to a Licensing Board under any provision of this Act may appeal against any decision (other than a procedural decision) of the Board in relation to the application.

(2) Where a premises licence review application or proposal is made to or by a Licensing Board in relation to any licensed premises, the holder of the premises licence for the premises in relation to which the application or proposal is made, may appeal against any decision (other than a procedural decision) of the Board in relation to the application or proposal.

(3) Subject to subsection (4), any appeal under this section is to be made by way of stated case, at the instance of the appellant, to the sheriff principal of the appropriate sheriffdom.
(4) An appeal against a decision of a Licensing Board to suspend a premises licence may, if—
   (a) the decision has immediate effect, and
   (b) the ground of appeal is that specified in subsection (5)(b),
be made by summary application to the sheriff of the appropriate sheriffdom.

(5) The grounds on which a Licensing Board’s decision may be appealed under this section are—
   (a) that, in reaching the decision, the Licensing Board—
       (i) erred in law,
       (ii) based their decision on an incorrect material fact,
       (iii) acted contrary to natural justice, or
       (iv) exercised their discretion in an unreasonable manner, or
   (b) where the decision is to take any of the steps mentioned in subsection (6), that the step taken is disproportionate in all the circumstances.

(6) Those steps are—
   (a) at a review hearing in respect of a premise licence—
       (i) issuing a written warning to the licence holder,
       (ii) revoking or suspending the licence, or
       (iii) making a variation of the licence, or
   (b) making an order revoking, suspending or endorsing a personal licence.

(7) Where the sheriff principal or, as the case may be, sheriff upholds an appeal against a Licensing Board’s decision under this section, the sheriff principal or sheriff may—
   (a) remit the case back to the Licensing Board for reconsideration of the decision,
   (b) reverse the decision, or
   (c) make, in substitution for the decision, such other decision as the sheriff principal or sheriff considers appropriate, being a decision of such nature as the Licensing Board could have made.

(8) In this section, “the appropriate sheriffdom” means the sheriffdom in which the principal office of the Licensing Board whose decision is being appealed is situated.

123 Appeals: supplementary provision

(1) A Licensing Board whose decision is appealed under section 122 may be a party to the appeal.

(2) In considering the appeal, the sheriff principal or, as the case may be, sheriff may hear evidence.

(3) On determining the appeal, the sheriff principal or sheriff may make such ancillary order (including an order as to the expenses of the appeal) as the sheriff principal or sheriff thinks fit.

(4) A sheriff principal to whom an appeal is made under section 122 may authorise any other sheriff of the sheriff principal’s sheriffdom to consider and determine the appeal.
(5) In this section and section 122, references to a sheriff principal include references to any sheriff authorised under subsection (4).

(6) Any party to an appeal under section 122 may appeal to the Court of Session on a point of law against the sheriff principal’s or sheriff’s decision on the appeal.

(7) A decision of a Licensing Board which is appealed under section 122 continues to have effect despite the appeal.

(8) Further provision as to the procedure in any appeal under section 122, including in particular provision as to the times by which such an appeal is to be made or determined, may be prescribed by Act of Sederunt.

124 Hearings

(1) Where a Licensing Board is to hold a hearing under any provision of this Act, the hearing must be held at a meeting of the Board.

(2) The Scottish Ministers may by regulations make provision as to the procedure to be followed at or in connection with any hearing to be held by a Licensing Board under this Act.

(3) Regulations under subsection (2) may, in particular, make provision—
   (a) for notice of the hearing to be given to such persons as may be prescribed in the regulations,
   (b) about the rules of evidence which are to apply for the purposes of the hearing,
   (c) about the representation of any party at the hearing,
   (d) as to the times by which any step in the procedure must be taken, and
   (e) as to liability for expenses.

125 Form etc. of application and notices

(1) The Scottish Ministers may by regulations prescribe—
   (a) the form of any application or notice under this Act,
   (b) the manner in which it is to be made or given,
   (c) the time by which it is to be made or given,
   (d) requirements as to the publicising of the making or giving of the application or notice,
   (e) the information to be contained in it (in addition to any required to be contained in it by virtue of any other provision of this Act), and
   (f) the documents which are to accompany it (in addition to any required to accompany it by virtue of any other provision this Act).

(2) Regulations under subsection (1) may provide that any application or notice made or given under this Act may be treated as not made or given if any requirement prescribed in the regulations in relation to it is not complied with.
126  **Power to relieve failure to comply with rules and other requirements**

(1) A Licensing Board may relieve any applicant or other party to proceedings before the Board of any failure to comply with any procedural provision if—

(a) the failure is due to mistake, oversight or other excusable cause, and

(b) the Board considers it appropriate in all the circumstances to relieve the failure.

(2) Where a Board exercises the power under subsection (1), the Board may make such order as appears necessary or expedient to enable the proceedings to continue as if the failure had not occurred.

(3) In subsection (1), “procedural provision” means—

(a) any requirement of regulations under—

(i) section 124(2),

(ii) section 125(1), or

(iii) paragraph 12(4) of schedule 1,

(b) any requirement of rules under paragraph 12(5) of that schedule, and

(c) any other requirement imposed by virtue of this Act as respects the procedure to be followed in connection with applications made to, or other proceedings before, a Licensing Board.

127  **Fees**

(1) The Scottish Ministers may by regulations make provision for the charging of fees by Licensing Boards—

(a) in respect of applications under this Act, and

(b) otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under this Act.

(2) Regulations under subsection (1) may, in particular—

(a) specify fees or provide for them to be determined by reference to such factors as may be specified in or determined under the regulations,

(b) provide for annual or other recurring fees,

(c) provide for the remission or repayment of fees in such circumstances as may be specified in or determined under the regulations.

(3) Before making any regulations under subsection (1) (other than regulations consolidating other regulations), the Scottish Ministers must consult—

(a) such body or bodies as appear to them to be representative of the interests of—

(i) Licensing Boards,

(ii) councils, and

(iii) those likely to be affected by the regulations, and

(b) such other persons (if any) as they think appropriate.

(4) Where regulations under subsection (1) provide for a fee to be charged in respect of any application made to a Licensing Board under this Act, the Board need not consider the application unless and until the fee is paid.
(5) Any fee chargeable by a Licensing Board under any regulations made under subsection (1) is to be paid to the clerk of the Board.

(6) The clerk of a Licensing Board must pay any sums received under subsection (5) to the relevant council.

Miscellaneous

128 Inspection of premises before grant of licence etc.

(1) In this section, “relevant proposal or application” means—
(a) a premises licence application,
(b) a premises licence variation application,
(c) a premises licence review proposal or application,
(d) an application under section 45(2) for a temporary premises licence, or
(e) an application under section 53(1) for an occasional licence.

(2) Any of the persons specified in subsection (3) may, at any reasonable time before the determination of a relevant proposal or application, enter the premises to which the proposal or application relates for the purposes of assessing—
(a) in the case of an application such as is mentioned in paragraph (a), (b), (d) or (e) of subsection (1), the likely effect of the grant of the application on the licensing objectives, or
(b) in the case of a proposal or application such as is mentioned in paragraph (c) of that subsection, the effect which the selling of alcohol in accordance with the premises licence is having on those objectives.

(3) The persons referred to in subsection (2) are—
(a) a constable, and
(b) a Licensing Standards Officer for the council area in which the premises are situated.

(4) A person exercising the power conferred by subsection (2) may if necessary use reasonable force.

(5) A person who intentionally obstructs a person exercising the power conferred by subsection (2) commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

129 Police powers of entry

(1) A constable may at any time enter and inspect any licensed premises.

(2) A constable may—
(a) if the condition in subsection (3) is satisfied, and
(b) subject to subsection (4),
at any time enter and inspect any premises (other than licensed premises) on which food or drink is sold for consumption on the premises.
(3) The condition referred to in subsection (2)(a) is that the constable has reasonable grounds for believing that alcohol is being sold on the premises in breach of section 1(1).

(4) A constable below the rank of inspector may exercise the power conferred by subsection (2) only—

(a) if the constable has obtained written authority to do so from a justice of the peace or a constable of or above the rank of inspector,

(b) within the period of 8 days beginning with the date on which such authority is obtained, and

(c) at such time or times as is specified in the authority.

(5) A person who intentionally obstructs a constable exercising a power conferred by this section commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

130 Remote sales of alcohol

(1) This section applies where, in connection with any sale of alcohol, the premises from which the alcohol is despatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken.

(2) Where the premises from which the alcohol is despatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.

(3) The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of orders in Scotland for sales of alcohol in circumstances where—

(a) the premises from which the alcohol is despatched for delivery in pursuance of the sales are not in Scotland, but

(b) the place to which the alcohol is delivered is in Scotland.

(4) Regulations under subsection (3) may, in particular—

(a) modify any provision of this Act,

(b) apply any such provision with modifications, or

(c) disapply any such provision.

131 Presumption as to liquid contents of containers

(1) This section applies for the purpose of any trial in proceedings for an alleged offence under any provision of this Act.

(2) Where—

(a) liquid is found in a container (whether open or sealed), and

(b) there is on the container a description of the liquid contents of the container, the liquid found is to be presumed to be liquid of that description.

(3) Where an open container is found which—

(a) contains—
(i) no liquid, or
(ii) an amount of liquid insufficient to allow analysis of it,
(b) was sealed at the time it was sold or supplied, and
(c) has on it a description of the liquid contents of the container,
the container is to be presumed to have contained, at the time it was sold or supplied, liquid of that description.

(4) At the trial, any party to the proceedings may rebut the presumption mentioned in subsection (2) or (3) by proving that, at the time of its sale or supply, the liquid in the container was not of the description on the container.

(5) However, a party may lead evidence for the purpose of rebutting the presumption only if the party has, not less than 7 days before the date of the trial, given notice of the intention to do so to the other parties.

132 **Offences by bodies corporate etc.**

(1) Where—

(a) an offence under this Act has been committed by—

(i) a body corporate,
(ii) a Scottish partnership, or
(iii) an unincorporated association other than a Scottish partnership, and
(b) it is proved that the offence was committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(i) a relevant person, or
(ii) a person purporting to act in the capacity of a relevant person,

that person, as well as the body corporate, partnership or, as the case may be, unincorporated association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant person” means—

(a) in relation to a body corporate other than a council, a director, manager, secretary, member or other similar officer of the body,
(b) in relation to a council, an officer or member of the council,
(c) in relation to a Scottish partnership, a partner, and
(d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

**General**

133 **Guidance**

(1) The Scottish Ministers may issue guidance to Licensing Boards as to the exercise of their functions under this Act.

(2) The Scottish Ministers may modify any guidance issued by them under subsection (1).
(3) Each Licensing Board must, in the exercise of their functions under this Act, have regard to any guidance issued to them under subsection (1).

(4) Where a Licensing Board decides not to follow any guidance issued under subsection (1), the Board must give the Scottish Ministers notice of the decision together with a statement of the reasons for it.

(5) The first guidance to Licensing Boards under subsection (1) is not to be issued by the Scottish Ministers unless a draft of the guidance has been laid before, and approved by resolution of, the Scottish Parliament.

(6) The Scottish Ministers must lay any subsequent guidance issued by them under subsection (1) before the Parliament.

134 Crown application

(1) This Act binds the Crown.

(2) No contravention by the Crown of any provision made by virtue of this Act makes the Crown criminally liable; but the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) However, any provision made by virtue of this Act applies to persons in the public service of the Crown as it applies to other persons.

135 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

136 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—
   (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
   (b) different provision for different purposes.

(3) An order under section 135 may modify any enactment (including this Act), instrument or document.

(4) A statutory instrument containing an order or regulations under this Act (except section 140(2) and, where subsection (5) of this section applies, section 135) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) No order under section 135 containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Parliament.

137 Interpretation

(1) In this Act—
“alcoholic drink” means a drink consisting of or containing alcohol,

“applicant”, in relation to any application under this Act, means the person making the application,

“appropriate chief constable” means, in relation to a Licensing Board, the chief constable for the police area in which the area of the Board is situated,

“area” means—

(a) in relation to a council, the local government area for which the council is constituted,

(b) in relation to a Licensing Board or Local Licensing Forum, the council area or, as the case may be, licensing division for which the Board or Forum is established,

“child” means a person under the age of 16,

“community council” has the same meaning as in Part IV of the Local Government (Scotland) Act 1973 (c.65),

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“licensed premises” means premises in respect of which a premises licence or occasional licence has effect,

“liqueur confectionery” means confectionery which—

(a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogramme of the confectionery, and

(b) either consists of separate pieces weighing not more than 50 grammes or is designed to be broken into such pieces for the purposes of consumption,

“premises” means any place and includes a vehicle, vessel or moveable structure,

“prescribed” means prescribed by regulations made by the Scottish Ministers,

“relevant council” means, in relation to a Licensing Board or Local Licensing Forum, the council—

(a) for whose area the Board or Forum is established, or

(b) in the case of a Board or Forum established for a licensing division, for the area of which the division forms part,

“sell”, in relation to alcohol, includes barter and expose to or offer for sale, and related expressions such as “sale” are to be construed accordingly,

“strength”, in relation to alcohol, is to be determined in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c.4),

“subject premises” means, in relation to any application under this Act, the premises to which the application relates,

“vehicle” means a vehicle intended or adapted for use on roads,

“vessel” includes a ship, boat, raft or other apparatus constructed or adapted for floating on water,

“wholesale” and “wholesaler”, in relation to the sale of alcohol, has the meaning given by section 4(1) of the Alcoholic Liquor Duties Act 1979 (c.4) in relation to dutiable alcoholic liquor,
“young person” means a person aged 16 or 17.

(2) For the purposes of this Act, a person is, in relation to a partnership, a company or a club, a connected person if the person—

(a) in the case of a partnership, is a partner,

(b) in the case of a company—

(i) is a director, or

(ii) has control of the company,

(c) in the case of a club, is an office bearer of the club.

(3) For the purposes of subsection (2)(b)(ii) and this subsection, a person is taken to have control of a company if—

(a) any of the directors of the company, or of any other company having control of the company, is accustomed to act in accordance with the person’s directions or instructions, or

(b) the person is entitled to exercise, or to control the exercise of, at least one third of the voting power at any general meeting of the company or of any other company having control of the company.

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### Repeals

The enactments mentioned in the first column in schedule 5 are repealed to the extent specified in the second column.

### Short title and commencement

(1) This Act may be cited as the Licensing (Scotland) Act 2005.

(2) This Act (other than this section and sections 135 to 138) comes into force on such day as the Scottish Ministers may by order appoint.
SCHEDULE 1
(introduced by section 5(8))

LICENSING BOARDS

Membership

5 1 (1) A Licensing Board is to consist of such number (being not fewer than 5 and not more than 10) of members as may be determined by the relevant council.

(2) The members of a Licensing Board are to be elected by the relevant council from among their councillors.

(3) In the case of a Licensing Board for a licensing division, not less than one third of the total number of members of the Board must be councillors for wards within the division.

Election of members

2 (1) Each council must, at their first meeting after each ordinary election of the council, hold an election of members to—

(a) the Licensing Board for the council’s area, or

(b) if that area is divided into licensing divisions, each of the Licensing Boards for those divisions.

(2) Where a council makes a determination under section 5(2) to divide their area into divisions, the council must—

(a) at the meeting at which that determination is made, or

(b) at the first meeting of the council after that meeting,

hold an election of members to the Licensing Board for each division.

(3) Where, under section 5(4), a council revokes a determination dividing their area into divisions, the council must—

(a) at the meeting at which the determination is revoked, or

(b) at the first meeting of the council after that meeting,

hold an election of members to the single Licensing Board for the council’s area.

(4) Where there is a vacancy in the membership of a Licensing Board, the relevant council must, at their first meeting after the vacancy arises, hold an election to fill the vacancy.

Disqualification from membership

30 3 (1) A councillor is disqualified from election as, and from being, a member of a Licensing Board if the councillor is—

(a) a premises licence holder,

(b) an employee of a premises licence holder and works as such in licensed premises,

(c) whether alone or in partnership with another person, engaged in the business of producing or selling alcohol,

(d) a director or other officer of a company so engaged, or

(e) an employee of any person so engaged and works as such in that business.
(2) A councillor who knowingly acts or purports to act as a member of a Licensing Board at a time when the councillor is disqualified from being such a member by virtue of sub-paragraph (1) commits an offence.

(3) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Tenure of office etc.**

4 (1) A member of a Licensing Board—

(a) holds office as such, subject to the following provisions of this paragraph and to paragraph 11(4), during the period—

(i) beginning on the day after the member’s election, and

(ii) ending on the day on which the next election of members of the Board is held in accordance with paragraph 2(1),

(b) is eligible for re-election as a member,

(c) may, at any time, resign by giving notice in writing to the clerk of the Board, and

(d) ceases to hold office—

(i) on ceasing to be a councillor of the relevant council, or

(ii) on becoming disqualified from being a member of a Licensing Board.

(2) The clerk must give the relevant council a copy of any notice received under sub-paragraph (1)(c).

**Removal of members from office**

5 The relevant council may remove a member from office if the member is unfit by reason of mental or physical inability.

**Convener**

6 (1) A Licensing Board must, at their first meeting after each election of members of the Board held in accordance with paragraph 2(1), (2) or (3), elect one of their members as convener of the Board.

(2) Where there is a vacancy in the office of convener, the Board must, at their first meeting after the vacancy arises, elect one of their members to fill the vacancy.

(3) The convener of a Licensing Board—

(a) holds office as such for the period—

(i) beginning on the day after the convener’s election, and

(ii) ending with the day on which the next election of a convener is held in accordance with sub-paragraph (1),

(b) is eligible for re-election as convener of the Board,

(c) may, at any time, resign by giving notice in writing to clerk of the Board, and

(d) ceases to hold office on ceasing to be a member of the Board.
(4) The clerk must give the relevant council a copy of any notice received under sub-
paragraph (3)(c).

(5) If the convener is for any reason unable to chair any meeting of the Board, the Board
must, at the meeting, elect another of their members to chair that meeting.

(6) If, at any meeting of the Board, there is an equality in the votes of members on any
matter, the member chairing the meeting has a casting vote.

Removal of convener

7 (1) The convener of a Licensing Board may be removed from office by the Board.

(2) A decision of a Board to remove the convener is valid only if the number of members
voting in favour of the decision exceeds one half of the total number of members of the
Board.

Administrative support

8 (1) In relation to each Licensing Board, the relevant council must—

(a) appoint, on such terms and conditions as they may determine, a clerk of the
Board, and

(b) provide the Board and the clerk, or ensure they are provided, with such other staff,
property and services as are required for their purposes.

(2) A clerk appointed under sub-paragraph (1)(a) must be an advocate or solicitor.

Committees

9 A Licensing Board may establish committees for or in connection with the exercise of
any of their functions.

Delegation of functions

10 (1) A Licensing Board may authorise (whether generally or specifically)—

(a) any member of the Board,

(b) any committee established by the Board,

(c) the clerk of the Board, or

(d) any member of staff provided under paragraph 8(1)(b),

to exercise on behalf of the Board any of the Board’s functions under this Act, other
than the functions mentioned in sub-paragraph (2).

(2) Those functions are—

(a) determining the Board’s policy for the purposes of a licensing policy statement or
supplementary licensing policy statement,

(b) determining, for the purposes of any such statement, whether there is
overprovision of licensed premises, or licensed premises of any particular
description, in any locality,

(c) determining a premises licence application,
(d) determining a premises licence variation application where the variation sought is not a minor variation,

(e) determining an application for the transfer of a premises licence where the applicant has been convicted of a relevant offence or a foreign offence,

5 (f) determining—
   (i) a personal licence application, or
   (ii) a personal licence renewal application,

   where the applicant has been convicted of a relevant offence or a foreign offence,
   (g) conducting a hearing under this Act (including taking any of the steps mentioned in sub-paragraph (3) at, or as result of, the hearing),

   (h) making a closure order,

   (i) refusing an application for confirmation of a provisional premises licence.

(3) The steps referred in sub-paragraph (2)(g) are—

   (a) at a review hearing in respect of a premises licence—

   (i) issuing a written warning to the licence holder,
   (ii) revoking or suspending the licence, or
   (iii) making a variation of the licence, or

   (b) making an order revoking, suspending or endorsing a personal licence.

(4) A Licensing Board may, under sub-paragraph (1), delegate to the clerk of the Board the function of granting an occasional licence application only where there is no notice of objection or representations in relation to the application, or no notice from the appropriate chief constable recommending refusal of the application.

Training of members

11 (1) Each member of a Licensing Board must, no later than one month after the expiry of each 3 month period, produce to the clerk of the Board evidence that the member has, during the period, complied with such requirements as to the training of members of Licensing Boards as may be prescribed.

(2) In sub-paragraph (1), “3 month period” means, in relation to a member of a Licensing Board—

   (a) the period of 3 months beginning on the day on which the member is elected, and
   (b) if the member is re-elected, the period of 3 months beginning with the day on which the member is re-elected.

(3) A member of a Licensing Board must not take part in any proceedings of the Board until the member has produced the evidence required by sub-paragraph (1).

(4) If a member of a Licensing Board fails to comply with sub-paragraph (1), the member ceases to hold office as a member of the Board.

(5) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—

   (a) provide for accreditation by the Scottish Ministers of—
(i) courses of training, and
(ii) persons providing such courses,
for the purposes of the regulations,
(b) prescribe different requirements in relation to different descriptions of members, and
(c) require that any person providing training or any particular description of training in accordance with the regulations holds such qualification as may be prescribed in the regulations.

Proceedings

12 (1) The quorum for a meeting of a Licensing Board is 3 members.

(2) Subject to sub-paragraph (3), meetings of a Licensing Board must be held in public.

(3) The members of a Licensing Board may, before the Board decides any matter, conduct their deliberations on the matter in private.

(4) The Scottish Ministers may by regulations make further provision about the proceedings of Licensing Boards including, in particular, provision as to—
(a) the times by which applications to a Board under this Act, and other business to be considered by a Board, are to be determined or considered,
(b) the publicising of meetings of a Board, and
(c) public access to any agenda and record of, and other information concerning, a meeting of a Board.

(5) Subject to—
(a) the other provisions of this paragraph, and
(b) any regulations made under sub-paragraph (4),
the arrangements for meetings of a Licensing Board, and other matters relating to proceedings of the Board, are to be such as the Board may by rules provide.

(6) A Licensing Board must ensure that any rules made by them under sub-paragraph (5) are published.

Validity of proceedings

13 The proceedings of a Licensing Board are not affected by—

(a) any vacancy in the membership of the Board,
(b) any defect in the election of any member of the Board, or
(c) the disqualification of any councillor from being a member of the Board.

Transitional and transitory provision

14 (1) Until the end of the day of the first election of members of a Licensing Board in accordance with paragraph 2(1), the members of the Board are to continue to be those who were, immediately before the coming into force of section 5, the members of the Board established under section 1 of the Licensing (Scotland) Act 1976 (c.66) for the same area or, as the case may be, division.
Licensing (Scotland) Bill

Schedule 2—Local Licensing Forums

(2) Paragraph 4(1)(a) does not apply to a person who is a member of a Licensing Board by virtue of sub-paragraph (1) of this paragraph.

(3) In the application of paragraph 11 to such a person—
   (a) sub-paragraph (1) has effect as if for “each 3 month period” there were substituted “such period as the Scottish Ministers may direct”, and
   (b) sub-paragraph (2) is treated as if it were omitted.

SCHEDULE 2
(introduced by section 10(4))

LOCAL LICENSING FORUMS

Introductory
1 In this schedule, “Forum” means a Local Licensing Forum established under section 10.

Membership
2 (1) A Forum is to consist of such number (being not fewer than 5 and not more than 10) of members as the relevant council may determine.

(2) At least one of the members must be a Licensing Standards Officer for the council’s area.

(3) The other members are to be individuals appointed by the relevant council on such terms and conditions as the relevant council may determine.

(4) In appointing members of a Forum, the relevant council must seek to ensure so far as possible that the membership of the Forum is representative of the interests of persons or descriptions of persons who have an interest which is relevant to the Forum’s general functions.

(5) Those persons include—
   (a) holders of premises licences and personal licences,
   (b) the chief constable for the police area in which the Forum’s area is situated,
   (c) persons having functions relating to health, education or social work,
   (d) young people,
   (e) persons resident within the Forum’s area.

Convener
3 (1) At their first meeting in each calendar year, a Forum must elect one of the members of the Forum to be the convener of the Forum.

(2) The convener holds office, on such terms and conditions as the relevant council may determine, until the next election under sub-paragraph (1).

(3) Meetings of the Forum are to be chaired by the convener.

(4) If the office of convener is vacant or the convener is for any reason unable to act, a meeting of the Forum may be chaired by any other member present.
Administrative support

4 A council must provide each Forum established by them, or ensure each such Forum is provided, with such staff, property and services as the council considers are required for the Forum’s purposes.

Meetings and proceedings

5 (1) Each Forum must, in each calendar year, hold at least 4 meetings.

(2) Otherwise, the arrangements for meetings of a Forum and other matters relating to proceedings of the Forum, are to be such as the Forum may determine.

(3) The proceedings of a Forum are not affected by—

(a) any vacancy in the membership of the Forum, or

(b) any defect in the appointment of a member of the Forum.

SCHEDULE 3
(introduced by section 25(1))

PREMISES LICENCES: MANDATORY CONDITIONS

Interpretation

1 In this schedule, “the premises” means, in relation to any premises licence, the premises specified in the licence.

Compliance with the operating plan

2 Alcohol is to be sold on the premises only in accordance with the operating plan contained in the licence.

3 Any other activity to be carried on in the premises is to be carried on only in accordance with the operating plan contained in the licence.

The premises manager

4 (1) Alcohol is not to be sold on the premises at any time when—

(a) there is no premises manager in respect of the premises,

(b) the premises manager does not hold a personal licence,

(c) the personal licence held by the premises manager is suspended, or

(d) the licensing qualification held by the premises manager is not the appropriate licensing qualification in relation to the premises.

(2) In sub-paragraph (1), “appropriate licensing qualification” in relation to any licensed premises means any licensing qualification prescribed as such in relation to licensed premises of that description in regulations under section 82(2)(d).

(3) Nothing in sub-paragraph (1) or paragraph 5 is to be read as requiring the premises manager to be present on the premises at the time any sale of alcohol is made.
Licensing (Scotland) Bill

Schedule 3—Premises licences: mandatory conditions

Authorisation of sales of alcohol

5 Every sale of alcohol made on the premises must be authorised (whether generally or specifically) by—
   (a) the premises manager, or
   (b) another person who holds a personal licence.

Training of staff

6 (1) No person (other than a person who holds a personal licence) is to work in the premises in the capacity mentioned in sub-paragraph (2) unless that person has complied with such requirements as to the training of staff as may be prescribed for the purposes of this paragraph.
   (2) That is a capacity (whether paid or unpaid) which involves the person—
      (a) making sales of alcohol, or
      (b) where alcohol is sold on the premises for consumption on the premises, serving such alcohol to any person.

7 (3) Regulations under sub-paragraph (1) prescribing training requirements may, in particular—
      (a) provide for the accreditation by the Scottish Ministers of—
         (i) courses of training, and
         (ii) persons providing such courses,
      (b) prescribe different training requirements in relation to different descriptions of persons,
      (c) require that any person providing training or any particular description of training in accordance with the regulations hold a personal licence or such other qualification as may be prescribed in the regulations, and
      (d) require training to be undergone again at such intervals as may be prescribed in the regulations.

Pricing of alcohol

7 (1) The condition specified in sub-paragraph (2) applies only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
   (2) The price at which any alcohol is sold on the premises must not be varied during the period of 48 hours beginning with the time at which the price at which that or any other alcohol is sold on the premises was last fixed.

Irresponsible drinks promotions

8 (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.
   (2) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
(3) A drinks promotion is irresponsible if it—
   (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,
   (b) involves 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),
   (c) involves 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,
   (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
   (e) is based on the strength of any alcohol,
   (f) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or
   (g) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.

(4) The Scottish Ministers may by regulations modify sub-paragraph (3) so as to—
   (a) add further descriptions of drinks promotions, or
   (b) modify any of the descriptions of drinks promotions for the time being listed in it.

(5) In this paragraph, “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

Provision of non-alcoholic drinks

9 (1) The conditions specified in this paragraph apply only to the extent that the premises licence authorises the sale of alcohol for consumption on the premises.

(2) Tap water fit for drinking must be provided free of charge on request.

(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

Payment of annual or recurring fees

10 (1) The condition specified in sub-paragraph (2) applies only in relation to a premises licence in respect of which an annual or other recurring fee is to be paid by virtue of regulations under section 127(1).

(2) The fee must be paid as required by the regulations.

SCHEDULE 4
(introduced by section 57(1))

OCCASIONAL LICENCES: MANDATORY CONDITIONS

Interpretation

1 In this schedule, “the premises” means, in relation to any occasional licence, the premises specified in the licence.
Compliance with licence

2 Alcohol may be sold on the premises only in accordance with the terms of the licence.
3 Any other activity to be carried on in the premises may be carried on only in accordance with the description of the activity contained in the licence.

Authorisation of sales of alcohol

4 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to the holder of a premises licence or personal licence.
(2) Every sale of alcohol made on the premises to which the licence relates must be authorised (whether generally or specifically) by the holder of a personal licence.

Voluntary organisations

5 (1) The condition specified in sub-paragraph (2) applies only to an occasional licence issued to a representative of a voluntary organisation.
(2) Alcohol may be sold on the premises only at an event taking place on the premises in connection with the voluntary organisation’s activities.

Pricing of alcohol

6 (1) The condition specified in sub-paragraph (2) applies only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.
(2) The price at which any alcohol is sold on the premises must not be varied during the period of 48 hours beginning with the time at which the price at which that or any other alcohol is sold on the premises was last fixed.

Irresponsible drinks promotions

7 (1) The conditions specified in this paragraph apply only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.
(2) An irresponsible drinks promotion must not be carried on in or in connection with the premises.
(3) A drinks promotion is irresponsible if it—
   (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,
   (b) involves 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),
   (c) involves 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,
   (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),
   (e) is based on the strength of any alcohol,
(f) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or

(g) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.

(4) The Scottish Ministers may by regulations modify sub-paragraph (3) so as to—

(a) add further descriptions of drinks promotions, or

(b) modify any of the descriptions of drinks promotions for the time being listed in it.

(5) In this paragraph, “drinks promotion” means, in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises.

Provision of non-alcoholic drinks

8 (1) The conditions specified in this paragraph apply only to the extent that the occasional licence authorises the sale of alcohol for consumption on the premises.

(2) Tap water fit for drinking must be provided free of charge on request.

(3) Other non-alcoholic drinks must be available for purchase at a reasonable price.

SCHEDULE 5
(introduced by section 139)

REPEALS

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5
Licensing (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold; and for connected purposes.

Introduced by: Mr Tom McCabe
On: 28 February 2005
Supported by: Tavish Scott
Bill type: Executive Bill
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

LICENSING (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Licensing (Scotland) Bill introduced in the Scottish Parliament on 28 February 2005:
   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 37–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill is in 9 Parts.

5. These are:
   - Part 1 – Core provisions
   - Part 2 – Licensing bodies and officers
   - Part 3 – Premises licences
   - Part 4 – Occasional licences
   - Part 5 – Licensed hours
   - Part 6 – Personal licences
   - Part 7 – Control of order
   - Part 8 - Offences
   - Part 9 – Miscellaneous and general

6. Commentary explaining the changes introduced by each Part is provided below. The main legislation which currently governs licensing in Scotland is the Licensing (Scotland) Act 1976 (c.66) as amended and the Licensed Premises (Exclusion of Certain Persons) Act 1980 (c.32). The Bill repeals this legislation.

COMMENTARY ON PARTS

PART 1 – CORE PROVISIONS

Section 1 – Prohibition of unlicensed sale of alcohol

7. This Bill makes provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold. Section 1 establishes that a licence is required to sell alcohol unless the premises are exempt as defined in section 116 or the sale is made by wholesale to another trader. A sale is by wholesale if it is of the following quantities:
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

- 9 litres or 1 crate of spirits, wine or made wine
- 20 litres or 2 crates of beer or cider.

Section 2 – Meaning of “alcohol”

8. This section provides an interpretation of the term “alcohol” for the purposes of this Bill.

Section 3 – Certain supplies of alcohol to be treated as sales

9. This section provides for certain supplies of alcohol to be treated as sales of alcohol for the purposes of this Bill. This ensures that those supplies would come under the provisions of the new licensing regime. 2 types of supply are covered.

10. The first is supplies by clubs to their members. Members’ clubs are owned by their members. So the members own the stock. They do not need to sell the alcohol to themselves. But this provision ensures that the supplies are treated as sales so that the club still needs a premises licence.

11. The second type of supply is where the alcohol is supplied in pursuance of a contractual right. For example, some hotels or resorts may offer “all inclusive” packages under which the price paid for the stay at the hotel or resort includes unlimited supplies of “free” drink. This provision ensures that the supply of alcohol under such packages is treated as a sale so that the hotel or resort, or at least the bar in the hotel or resort, requires a premises licence.

12. The second set of circumstances might also cover arrangements whereby alcohol is supplied at a bar in exchange for a voucher or token which is bought elsewhere. The supply at the bar will be treated as a sale so that the bar needs a premises licence.

Section 4 – The licensing objectives

13. This section establishes 5 high level “licensing objectives” that represent the values on which the Scottish licensing system would be based, the parameters against which everyone would measure the elements of that system and the solid foundation which local authority Licensing Boards must have regard to in carrying out their functions under the Bill.

PART 2 – LICENSING BODIES AND OFFICERS

Section 5 – Licensing Boards

14. Licensing Boards were introduced by the Licensing (Scotland) Act 1976 and subsection (1) of this section retains them. There will continue to be a Board for each council area or, where a council area has been divided into licensing divisions, a Board for each division. The Boards will continue to be made up of local authority councillors and appointed by the local authority.
15. Subsection (2) provides that where local authorities consider it appropriate to do so, they may split their area up into licensing divisions in the future.

16. Subsection (3) sets out the consequences of establishing licensing divisions. This includes the requirement that for each of those division areas, a separate Licensing Board would have to be established and that where this occurs the existing Licensing Board for that local authority would be dissolved. The provision of licensing divisions is a continuation of the current procedure under the Licensing (Scotland) Act 1976.

17. Subsection (4) allows for licensing divisions to be merged back into a single area so that there is a single Board for the whole area. Subsection (5) provides for the consequences of such a merging of divisions.

Section 6 – Statements of licensing policy

18. Subsection (1) places a duty on Licensing Boards to publish what is to be known as a “licensing policy statement” for their area for a 3-year period. This statement would offer guidance and clarity on the policy on which Licensing Boards would base their decisions in implementing their functions under the Bill. This is particularly important for a system which is likely to have quite a high degree of local flexibility in terms of the discretion given to Licensing Boards.

19. Subsection (2) provides that Boards have a power to issue a supplementary statement within that 3-year period. It is intended that this supplementary power would cover new or unanticipated issues.

20. Subsection (3) places a duty on Boards, when preparing their policy statements to ensure that the statements promote the 5 licensing objectives set out in section 4 and to consult on their proposed policy statements with those persons listed in paragraph (b)(i) to (iii).

21. Subsection (7) allows Scottish Ministers to specify the date by which Boards must prepare their first policy statement under the new regime.

Section 7 – Duty to assess overprovision

22. Subsection (1) places a duty on Licensing Boards to make a pro-active assessment of local provision of licensed premises in their area as part of their policy statements. There would also be flexibility for Boards to decide, for any locality, whether there was overprovision generally in relation to licensed premises or only in relation to a particular identifiable sector.

23. Subsection (2) provides that Boards would themselves determine what amounts to a “locality” for this purpose. This is as flexible as possible to reflect the very different pressures which may apply in different geographical areas throughout the country.

24. Subsection (3) places a duty on Boards when considering their policy on overprovision to have regard to those matters specified and to consult with those persons listed in subsection (4).
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

25. Premises which have only an occasional licence are to be left out of the assessment of overprovision.

Section 8 – Applicants attempting to influence Board members

26. This section provides that it would be an offence for anyone who has submitted an application under the Bill to attempt to influence in their favour a member of the Licensing Board at any time. Subsection (2) establishes how the Board should proceed where a prosecution for an offence under this section has been brought against an applicant.

Section 9 – Licensing Board’s duty to keep a public register

27. This section places a duty on Licensing Boards to keep a licensing register containing the information set out in subsection (1)(a) to (c). Subsection (2) provides that Scottish Ministers may regulate the type of information required and the form in which it is kept.

Section 10 – Local Licensing Forums

28. Subsection (1) places a duty on each council to establish a Local Licensing Forum for its area. The establishment of these forums is new and should enhance the local Board’s awareness of both the beneficial and detrimental impact of their policies in particular on the local community and on local trade. Where a local authority has split their area into separate licensing divisions, subsection (2) allows for the establishment of a separate Local Licensing Forum for each of those divisions.

29. Subsection (3) provides that there should as a minimum be at least one formal annual meeting between the Board and the local Forum. This is important to ensure that a relationship is established between these bodies.

Section 11 – General functions of Local Licensing Forums

30. This section establishes the general function of Local Licensing Forums. The role of the Local Licensing Forum is to comment on the Board’s general policy approach and not to comment on individual licence applications.

Section 12 – Licensing Boards’ duties in relation to Local Licensing Forums

31. This section establishes duties on Boards to have regard to the Forums’ advice, to provide any statistical information that the Forums may request from them and to present reasons why they have followed a different route from that recommended by the Forum.

Section 13 – Licensing Standards Officers

32. Subsection (1) places a duty on local authorities to appoint one or more officers to be known as Licensing Standards Officers (“LSOs”) whose general statutory functions are those set out in section 14 of the Bill. This is a new role. The Civic Government (Scotland) Act 1982 empowers the police and authorised officers of licensing and fire authorities to enter and inspect
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

premises, vehicles or vessels of a licence holder or applicant for a licence. With respect to liquor licensing, however, there is currently no such provision.

Section 14 – General functions of Licensing Standards Officers

33. Subsection (1) establishes the general functions of Licensing Standards Officers and those are set out in paragraphs (a) to (c). LSOs would not act as policemen with regard to licensing but they would liaise with the police and other relevant officials such as environmental health officers in ensuring the licensing objectives are adhered to and solutions found to problems involving licensed premises. LSOs would act as a source of advice and guidance for licensees and for the community; mediate between communities and the trade or between any two parties where there is a need to resolve a local problem and develop a local solution and supervise compliance with licence conditions by the relevant licence holders.

34. Subsection (2) sets out in more detail the power of the LSO to deal with a breach of licence conditions by issuing a written warning to the licence holder and making a referral to the Licensing Board for review of the licence.

Section 15 – Powers of entry and inspection

35. Subsections (1), (2) and (3) give LSOs power to enter and inspect both licensed premises and other premises suspected of selling alcohol to establish compliance with the licensing system, licensing objectives and licence.

36. Subsections (4) and (5) place a duty on licence holders and those managing and working on premises to co-operate with and assist the LSOs in the performance of their functions and to provide any information or documents requested by the LSO.

37. Subsection (6) provides that any person referred to in subsection (4) who fails to assist or who obstructs the Licensing Standards Officer would be guilty of an offence.

PART 3 – PREMISES LICENCES

Section 16 – Premises licence

38. This section introduces the new premises licence. This replaces the seven different types of licences under the current legislation. The Bill provides that anyone wishing to sell alcohol on any premises, subject to the exceptions set out in the Bill, would have to hold a premises licence.

Section 17 – Meaning of “appropriate Licensing Board”

39. This section provides that for the purposes of premises licences, the “appropriate Licensing Board” for any premises is the Board in whose area the premises are situated (or mainly situated). If premises straddle two or more areas equally, applicants can nominate one of the Licensing Boards in question to act as the relevant Licensing Board. The effect of this section is to identify the Board which will carry out licensing functions in relation to premises licences.
Section 18 – Meaning of “premises manager”

40. This section introduces the term “premises manager”. Each premises licence will have to specify the premises manager for the premises.

Section 19 – Application for premises licence

41. Under subsection (1) any person, which includes corporate and unincorporated bodies and statutory bodies as well as individuals, can apply for a premises licence. However, if an individual wants a licence, he or she will need to be 18 or over. Under subsection (2) the application for a premises licence must be accompanied by a draft of the applicant’s proposed operating plan and a layout plan for the premises. These plans would provide Licensing Boards and local communities with a clear indication of what activities would be undertaken on a premises at the time of the licence application. Applications would also have to be accompanied by certain certificates relating to planning, building control and food hygiene (see section 48 of the Bill).

42. Subsection (4) provides that the form and content of operating plans would be set out in regulations. However, this subsection lists a number of specific requirements as to the content of operating plans, including the proposed opening hours.

Section 20 – Notification of application

43. This section places a duty on Licensing Boards to notify those persons specified in subsection (1) (a) to (e) of all applications they receive for premises licences. This is a new duty and a change from what was previously provided for in the Licensing (Scotland) Act 1976.

44. Subsections (3) to (5) set out the statutory duty that would be placed on Licensing Boards and the subsequent procedure that they would have to adopt, to notify the chief constable in their area of all applications received for premises licences. Subsection (3) places a duty on the chief constable to respond to the Licensing Boards by giving certain notices within a period of 21 days. This procedure is intended to ensure that checks are made for the existence or otherwise of any convictions for relevant or foreign offences that any applicant or those connected with the applicant may have. “Relevant offences” will be listed in regulations under section 120. “Foreign offences” are offences under the laws of countries other than Scotland which correspond to relevant offences. Section 137(2) and (3) makes provision identifying “connected persons” in relation to companies, partnerships and clubs. This ensures that checks are done on the persons in control of these bodies as well as the bodies themselves.

Section 21 – Objections and representations

45. This section widens the current provisions in the Licensing (Scotland) Act 1976 relating to those persons who would have a statutory right to make objections and representations in relation to applications for premises licences. Any person (whether an individual or a corporate or unincorporated body) may object or make representations provided that, as noted in section 21(3), this is not considered by the Board to be vexatious or frivolous.
Section 22 – Determination of premises licence application

46. This section sets out the procedure that Licensing Boards must adopt when they receive an application for a premises licence. It provides both for the circumstances where a Licensing Board proposes to grant a premises licence and where they propose to refuse a premises licence.

47. Subsection (5) sets out the grounds on which a Licensing Board may refuse a premises licence application. Those grounds are set out in paragraphs (a) to (d). One of the grounds relates to consistency with the licensing objectives. When considering the impact on the crime prevention objective in particular, the Board must pay particular attention to any convictions for relevant or foreign offences of which they have been notified by the chief constable and any recommendation as to refusal the chief constable may have given. However, the existence of convictions does not per se prevent the Board granting the licence.

Section 23 – Further application after refusal of premises licence application

48. This section provides in effect that, where a Licensing Board has refused an application for a premises licence, a subsequent application in respect of the same premises cannot be made within one year of the initial refusal.

49. However, the Licensing Board can, at the time of the initial refusal, dispense with the one year limit so allowing another application within that time. Even if the Board does not dispense with the limit, an applicant will be able to re-apply within the one year period if they can show that there has been a material change of circumstances since the initial refusal.

Section 24 – Issue of licence and summary

50. This section requires Licensing Boards, where they grant an application for a premises licence, to issue the applicant with a licence and a summary of the licence. The section also makes provision as to the form and content of the licence and summary. Subsection (2) sets out the minimum information which must be contained in the licence.

Section 25 – Conditions of premises licence

51. This section provides that all premises licences will be subject to those mandatory conditions set out in schedule 3 to this Bill, unless schedule 3 provides otherwise. The application of these mandatory conditions is intended to ensure national consistency on those matters specified in schedule 3.

52. Subsections (2) and (3) provide a power for the Scottish Ministers to set out such further national mandatory or discretionary conditions to be attached to premises licences as they think are needed for the purposes of the five licensing objectives established by this Bill.

53. Subsection (4) provides a power for Licensing Boards to impose additional licence conditions to those ones to which the licence may be subject by virtue of subsections (1) to (3). This power could be used in circumstances where additional conditions were needed for the purposes of any of the five licensing objectives established by the Bill and where some other
form of activity not covered by schedule 3 was being undertaken on the premises. However, under subsection (5) a Board may only impose additional licence conditions which do not run counter to the effect of national conditions, and which do not attempt to alter or add to those conditions to make them more onerous or restrictive.

54. Subsections (6) and (7) make clear the types of conditions which can be prescribed by Scottish Ministers and imposed by Licensing Boards. These can cover both the sale of alcohol and other activity carried out on the premises.

55. Subsection (8) provides a limitation on Licensing Boards’ powers under any provision of this Bill to vary the conditions of a premises licence to only those conditions provided for by this section.

Section 26 – Period of effect of premises licence

56. This section establishes the maximum duration for any premises licence issued under the Bill. The Licensing (Scotland) Act 1976 required licences to be renewed every 3 years. Premises licences under this Bill would generally continue in effect indefinitely as long as the premises in question continued to be used for the purpose or purposes for which the licence was granted. However, the licence could be revoked if conditions are breached and the licence also ceases if the holder dies, becomes incapable or insolvent unless a transfer is made under section 31. A licence holder may also choose to voluntarily surrender a licence.

57. Subsection (2) covers the situation where there is an application for a transfer of the premises licence made in any the circumstances provided for in subsection (5) i.e. where a licence would otherwise lapse as a result of death, bankruptcy, insolvency or incapacity.

58. Subsection (7) makes provisions for determining when licence holders become insolvent.

Section 27 – Application to vary premises licence

59. This section permits premises licence holders to apply to the Licensing Board which originally granted the licence for variations to the terms and conditions of the premises licence. There is currently no process for variations to be made to a licence under the Licensing (Scotland) Act 1976. Subsection (2) provides that all applications must be accompanied by the paper version of the premises licence, where practicable.

60. Subsection (4) provides that the duty placed on Licensing Boards under sections 20 and 21 of the Bill would apply to applications under this section for variations to premises licences. This would ensure that all those persons who had a statutory right to be notified, were notified of the proposed variation and that any person could make representations and objections to the variation.

61. Subsection (5) explains what a “variation” could cover. It includes any change to the operating plan. Subsection (6) provides for certain variations to be classed as “minor”. This is to enable those to be dealt with less formally.
Section 28 – Determination of application for variation

62. This section establishes the procedure that Licensing Boards must adopt when they are considering an application for a variation to a premises licence applied for under section 27 of the Bill.

63. Subsection (3) places a duty on Licensing Boards to hold a hearing when considering an application for all applications for a variation to premises licences, other than a minor variation, where subsection (2) places a duty on Licensing Boards to grant that application.

64. Subsections (4) and (5) provide that the Licensing Board’s decision must be based on the statutory grounds for refusal which are set out in subsection (5). These are similar to the grounds for refusal of an application for a licence.

65. Subsection (6) provides a power for Licensing Boards to make their own additional variations to the licence conditions where it grants the variation applied for.

Section 29 – Variation to substitute new premises manager

66. This section deals with a change of premises manager in relation to any premises. Licensed premises cannot operate without a premises manager being in post (see paragraph 4 of schedule 3). Where there is a change of premises manager, before the new premises manager can act as such, his or her name needs to be added to the licence. This section allows for the proposed new premises manager to take up post pending the granting of an application to vary the premises licence so as add the new premises manager’s name to it. This helps ensure that changes of premises manager can take effect quickly so as to enable businesses to continue to operate with the minimum disruption.

Section 30 – Further application after refusal of application for variation

67. This section in effect prevents a premises licence holder who has had an application for a variation refused re-applying for the same variation within a year of the initial refusal.

68. Subsection (3), however, permits Licensing Boards to dispense with the one year limit or, where the limit has not been dispensed with, nonetheless to consider a re-application within the one year period where circumstances have changed.

Section 31 – Transfer on application of licence holder

69. Subsection (1) provides that the holder of a premises licence may apply for the transfer of the licence to another person.

70. Subsection (4) provides that the Licensing Board must notify the application to the chief constable for their area and subsection (5) provides that the chief constable must respond within 21 days with the notice required by subsection (6). The statutory content of these notices are set out in subsection (6) and cover relevant and foreign offences.
71. Subsection (7) establishes that where the chief constable notifies the Licensing Board that the person(s) to whom the licence is proposed to be transferred (or a connected person) has been convicted of a relevant or foreign offence then the chief constable may also make a recommendation for refusal of the transfer application.

72. Subsections (8), (9) and (10) establish the procedure that Licensing Boards must adopt on receipt of the chief constable’s notice. Where the notice reports that no conviction is found the transfer must be granted. Where the notice reports a conviction the Board is under a duty to hold a hearing but the only ground on which the transfer application may be refused is that it is necessary to do so for the purposes of the crime prevention objective. Otherwise the application must be granted.

Section 32 – Transfer on application of person other than licence holder

73. This section allows for an application to be made for a transfer of a premises licence by the proposed transferee rather than the licence holder. Subsection (4) provides that all the procedure set out in section 31 applies to applications for transfer of a premises licence under this section.

74. The transferee may make an application within 28 days only in circumstances where the licence holder has died, become insolvent or incapable or the business is being sold or transferred. Where a sale or transfer is being made the transferee and transferor are, therefore, given the option of choosing who is to apply for the transfer (either under sections 31 or section 32).

75. A transferee will be able to apply under this section only if the transferee has a prescribed connection to the licence holder or the premises. For example, regulations under subsection (1) may prescribe that only the licence holder’s executor may apply under this section for transfer of the licence in circumstances where the licence holder has died.

Section 33 – Variation on transfer

76. This section allows persons applying for transfer of a premises licence also to apply at the same time for a variation to the terms and conditions of the premises licence. The provisions in sections 27 and 28 relating to applications and determinations of variation applications will apply to applications for variations under this section.

77. Subsection (3) caters for the case where a proposed transfer may depend on a variation being obtained to the licence. Where the person seeking the transfer makes it clear that this is the case, the Board must determine the application for variation prior to determining the application for transfer. If the variation is refused there is no need to proceed with the transfer application.

Section 34 – Application for review of premises licence

78. This section provides a power for Licensing Boards to review a premises licence on the application of any person. The grounds on which such a review would be undertaken are set out
in subsection (3). These include breach of the licence conditions or any other ground relevant to one of the licensing objectives.

79. A Licensing Standards Officer can apply for a review on the ground that there has been a breach of licence conditions only if the Officer has issued a written warning about the breach.

80. Subsection (5) places a duty on persons applying for a review of a premises licence to set out the grounds that they feel merit the review.

Section 35 – Review of premises licence on Licensing Board’s initiative

81. This section provides a power for Licensing Boards to initiate reviews of premises licences themselves. The grounds for review are the same as those for applications under section 34. Where a Licensing Board proposes to initiate a review of a premises licence, the Board must provide a written report (to be known as a review proposal) setting out the grounds that they feel merit such a review of the premises licence.

Section 36 – Review hearing

82. This section places a duty on the Licensing Board to hold a hearing (known as a “review hearing” for the purposes of this Bill) to consider and determine an application for a review of a premises licence made under section 34 or a review proposal under section 35. The Board does not need to hold a review hearing on an application for review if it considers the application is frivolous or vexatious or if it is not relevant to the grounds for review. Subsection (4) places a duty on Licensing Standards Officers to provide a report to the Board and provides a reciprocal duty on Boards to have regard to the report. Subsections (5) and (6) permit Boards to request information, the attendance at a hearing of any person and the production of documents.

Section 37 – Licensing Board’s powers on review

83. This section provides the range of sanctions that a Licensing Board may impose on reviewing a premises licence. The Board can issue a written warning, vary the licence, suspend it or revoke it. The Board can provide for a variation to apply only for a limited period of time.

Section 38 – Review of Licensing Board’s decision to vary or suspend licence

84. This section provides a mechanism by which a licence holder can apply to the Licensing Board to have any variation of their premises licence or the suspension of their premises licence removed. If the Board feels that the sanction in question is no longer necessary then they may remove the relevant sanction. This power applies only to variation or suspension of a premises licence following review.

Section 39 – Duty to notify court of premises licence

85. This section requires premises licence holders who are charged with relevant offences to notify the court of the fact that they hold a premises licence. This will enable the courts to become aware of cases to which the duty in section 40 will apply.
Section 40 – Court’s duty to notify Licensing Board of convictions

86. Where a premises licence holder is convicted of a relevant offence by a court in Scotland, the clerk of court will, under this section, be required to give notice of the conviction to the Licensing Board. The duty only applies if the clerk is aware that the person convicted holds a premises licence. In most cases, they will be made aware of that fact under section 39.

Section 41 – Licence holder’s duty to notify Licensing Board of convictions

87. Where a premises licence holder (or in the case of a company, partnership or club, a “connected person” – see section 137(2)) is convicted of a relevant offence in Scotland or a foreign offence then the licence holder must, no later than one month after the date of the conviction, notify the Licensing Board of the conviction. If the licence holder does not comply he or she would be guilty of an offence. The duty is imposed on the licence holder even where it is a connected person who has the conviction. This is because it is the licence holder who has the primary responsibility.

88. Subsection (4) specifies the mandatory requirements for such notices under subsection (3).

Section 42 – Procedure where Licensing Board receives notice of conviction

89. Where a Licensing Board receives notice of a conviction given under section 40 or 41 the Board must give the appropriate chief constable notice of it. The chief constable must then check the conviction and respond, within 21 days, either confirming the existence of the conviction and that it is for a relevant or foreign offence or stating that the chief constable is unable to confirm the conviction or that it does not relate to a relevant or foreign offence. Where the conviction is confirmed, the chief constable can make a recommendation that the premises licence be varied, revoked or suspended, if that is considered necessary for the purpose of the crime prevention objective.

90. Subsection (7) places a duty on the Licensing Board to initiate a review of the premises licence should they receive notification from the chief constable confirming the existence of a conviction.

Section 43 – Provisional premises licence

91. This section makes it clear that a premises licence application can be made in relation to premises which are being constructed or converted for use as licensed premises. A premise licence granted for such premises is referred to as a “provisional premises licence”. The section modifies certain provisions of the Bill as they apply to applications for provisional premises licences.

92. Subsection (3) provides that a provisional premises licence has no effect until confirmed under subsection (4). The licence has to be confirmed within 2 years otherwise it will automatically be revoked. The 2 year period can be extended if the construction or conversion work is delayed for reasons outwith the licence holder’s control.
Subsection (10) modifies section 19 (which sets out requirements as to applications for premises licences) of the Bill as it applies to applications for provisional premises licences. Paragraph (a) establishes that different certificates as to planning, building control and food hygiene are to be provided and paragraph (b) establishes that the name of the premises manager need not be provided on application.

**Section 44 – Confirmation of provisional premises licence**

94. This section sets out the procedure for confirmation of provisional premises licences. The licence holder has to apply for confirmation to the Licensing Board before the end of the 2 year period beginning when the licence was issued. Confirmation would, in practice, be sought when the construction or conversion work is completed and the premises are ready for use.

95. Subsection (2) sets out the mandatory requirements for applications for confirmation of provisional premises licences.

96. Subsection (3) makes it clear that the operating plan accompanying the application must confirm the name of the proposed premises manager.

97. Subsection (4) requires the Licensing Board to confirm the premises licence where the statutory conditions are met. Subsection (5) sets out those conditions – i.e. that during the period of the provisional licence there had been no variation to the operating plan or layout plan (other than a variation approved by the Board already or classed as a minor variation).

98. Subsection (6) provides that when confirming a premises licence under this section, a Licensing Board may vary any licence condition. However, this could only be done for the purpose set out in subsection (7).

**Section 45 – Temporary premises licence**

99. This section caters for the circumstances where premises which already have a premises licence are undergoing reconstruction or conversion work. The licence holder may want to move into temporary premises pending completion of the work. This section allows the licence holder to apply to the Licensing Board for a premises licence covering the temporary premises. Such a licence is referred to as a “temporary premises licence”.

100. Subsections (5) and (6) confirm the maximum duration of temporary premises licences issued under this section and establish that those licence conditions which were attached to the original application for the premises licence would apply to the temporary premises licence, subject to any exceptions or modification which the Licensing Board may provide for.

**Section 46 – Notification of change of name or address**

101. This section places a duty on the holder of a premises licence to notify the Licensing Board of any change of name or address of the premises licence holder or of the premises manager. This is meant to cover only actual name changes i.e. for example, where the licence holder is a company and changes its name, or the premises manager is a woman who changes her
name on marriage. A change in the identity of the premises licence holder is provided for in the provisions on transfer of premises licences. If there is a new premises manager, this must be provided for by seeking a variation of the licence so as to add the new premises manager’s name. A notification of a change of the licence holder's name or address or that of the premises manager under this section must be accompanied by the premises licence (unless that is impracticable, when a statement must be provided).

Section 47 – Licensing Board’s duty to update premises licence

102. This section is intended to ensure that the information contained in the premises licence is kept up-to-date. Subsection (1) requires the Licensing Board to make the appropriate changes to the information in the licence when they receive the notices of change of name or address and when they vary, transfer, confirm or review a premises licence. This ensures that there is always an accurate record of the licence.

103. In most cases the Licensing Board will have been sent the appropriate licence, but subsections (3) and (4) provide that the Board may require a holder to produce their licence within 14 days. Subsection (5) provides that failure to do so without reasonable excuse will be an offence.

Section 48 – Certificates as to planning, building standards and food hygiene

104. This section sets out the requirements as to the production of certificates evidencing compliance with planning, building control and food hygiene legislation in relation to premises in relation to which a licence application is made. Different requirements are imposed according to whether the application is for a full premises licence, a provisional premises licence or confirmation of a premises licence.

Section 49 – Duty to keep, display and produce premises licence

105. This section provides that a premises licence holder is under a duty to ensure that the premises licence or a certified copy is held on the premises to which it relates either by the licence holder or by the premises manager. A summary of the licence must be displayed prominently on the premises. It would be an offence to fail to comply with these requirements or to fail to produce the licence or a certified copy to a constable or a Licensing Standards Officer on request.

Section 50 – Theft, loss etc. of premises licence or summary

106. Subsection (1) provides that a premises licence holder may apply to the Licensing Board for a copy of a premises licence or a summary if the licence or summary has been lost, stolen, damaged or destroyed. If lost or stolen, the theft or loss must have been reported to the police. The Licensing Board must then issue a replacement licence or summary. The Bill applies in relation to a replacement and summary in the same way as it applies to the originals.

107. Subsection (3) establishes that a replacement licence or summary is to be certified as a true copy by the Licensing Board.
Section 51 – Dismissal, resignation, death etc. of premises manager

108. This section deals with circumstances where the premises manager ceases to work at the premises or dies or where the personal licence held by the premises manager is revoked or suspended. It gives a “period of grace” to allow the premises to continue operating despite not having a premises manager and pending the recruitment of a new one.

109. Subsection (3) places a duty on the premises licence holder to inform the Licensing Board of such circumstances within 7 days.

110. Subsection (4) and (5) provide that should this notification be done within the 7 day period and an application to substitute a new premises is made within 6 weeks of the loss of the premises manager, then the fact that the premises are, in the meantime, operating without a premises manager will be overlooked.

111. Subsection (6) provides that should there not be an application to a transfer of the premises licence under subsection (4) then the Licensing Board must vary the licence to reflect the fact that there is no longer any premises manager named on it. The period of grace will have ended and the premises would have stop operating as they would have no premises manager.

Section 52 – Certified copies

112. This section provides an interpretation of what is meant by the term “certified copy” used throughout this Part of the Bill.

PART 4 – OCCASIONAL LICENCES

Section 53 – Occasional licence

113. Subsection (1) provides a power for Licensing Boards to grant an occasional licence for premises other than licensed premises to those persons specified in subsection (2). For a premises licence holder this would be to authorise the sale of alcohol in the course of catering for an event taking place outwith their licensed premises. A typical example of where this might arise would be the provision of catering, including the sale of alcohol, at a wedding reception or other social event held on private property. Voluntary organisations may also apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation’s activities.

114. Subsection (5) sets out a maximum duration of 14 days for each occasional licence. Subsection (6) confirms the limits on the number of occasional licences that Licensing Boards can issue within a year to a voluntary organisation.

115. Subsection (7) provides a power for the Scottish Ministers to set out in regulations the form of occasional licences and subsection (8) sets out the mandatory content of occasional licences in paragraphs (a) to (h).
Section 54 – Notification of application to chief constable

116. This section places a duty on Licensing Boards to notify the chief constable of all applications for occasional licences under section 53 and for the chief constable to notify the Board within 21 days of whether, in the interests of the crime prevention licensing objective, the application should be refused.

Section 55 – Objections and representations

117. This section allows for any person to make objections and representations to Licensing Boards in connection with any application made to the Board for an occasional licence under section 53.

118. Subsection (2) places a duty on Licensing Boards to give the applicant notice of any objections or representations received and to take account of them in determining the application.

119. Subsection (3) permits Licensing Boards to reject any frivolous or vexatious objection or representation made to them. Subsection (4) permits Licensing Boards to recover costs from the person in question. Subsection (5) establishes the matters that would be considered acceptable evidence in any proceedings by a Licensing Board for recovery of costs under subsection (4).

Section 56 – Determination of application

120. This section sets out the procedure that Licensing Boards must adopt to determine an application under section 53 for an occasional licence. It provides both for the circumstances where a Licensing Board proposes to grant a licence and where they propose to refuse such a licence.

121. Subsection (3) provides that the Board’s decision must be based on the statutory grounds for refusal. These are set out in subsection (6). They are similar to the grounds for refusal of a premises licence application except that there is no “overprovision” ground. Subsection (7) provides that, when considering refusal on the ground that the application is inconsistent with the crime prevention objective, Licensing Boards must take into account and any recommendation for refusal made by the chief constable.

122. Subsection (8) places a duty on Licensing Board to notify those persons listed in paragraphs (a) to (c) of their determinations.

Section 57 – Conditions of occasional licence

123. This section makes provision as to the conditions to which occasional licences may be subject. It replicates section 25 in relation to premises licences.
PART 5 – LICENSED HOURS

Section 58 – Licensed hours

124. This section establishes the new regime of licensing hours on which the licensing system will be based. This is a move away from the current system of “permitted hours”. The Bill introduces a more modern approach and gets rid of the practice of giving extensions to hours in favour of clarity up front about acceptable hours. Licence holders would be required to specify their hours in their operating plans submitted to the Licensing Board for approval along with their premises licence applications and drawn up with regard to the Board's published policy statement, which would set out the Boards general approach to policy on licensing hours for their area. The hours for occasional licences would, similarly, be set out in the application for the licence and incorporated into the licence if granted.

Section 59 – Prohibition of sale, consumption and taking away of alcohol outwith licensed hours

125. The provisions in this section are to some extent based on section 54 of the Licensing (Scotland) Act 1976. The provisions here provide that it is an offence to sell alcohol outwith licensed hours or to allow the sale, consumption, or taking away of alcohol outwith licensed hours. Subsection (2) sets out a number of exceptions which cover, amongst other things, the period of 15 or 30 minutes “drinking-up” time.

126. Subsection (4) is a new offence which replaces the current offence of consuming or taking away alcohol outwith licensed hours. The consumption or taking away is now only an offence if the person was asked not to consume the alcohol or take it away but failed to comply with the request.

Section 60 – 24 hour licences to be granted only in exceptional circumstances

127. The presumption provided here is against 24 hour opening in Scotland for on and off sales. However, subsection (2) provides that Boards would be entitled to agree exceptions to that presumption but only if satisfied that there are exceptional circumstances justifying it. This is a test which would have to be applied on a case by case basis. Guidance will 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.

Section 61 – Effect of start and end of British Summer Time

128. This addresses an existing problem in relation to British Summer Time. The changing of the clock makes it difficult to fix on a uniform approach to whether the hours after midnight ought to be determined by the number of hours of extension granted in the licence application or by reference to the actual time on the clock. The Bill provides that under the new licensing system the times would be determined by the number of hours authorised at the time the licence was granted. Accordingly this section provides that at the times of the year when clocks are moved forwards or backwards to accommodate the requirements of British Summer Time, there
would be a uniformity of approach throughout the country as to the effect which this has on closing times.

129. Subsection (2) in effect means that in those licensed premises which are authorised to open later than the hour when the change takes place, their closing time should be determined by reference to the number of hours after midnight when they are authorised to be open rather than by the actual time shown on the clock.

**PART 6 – PERSONAL LICENCES**

**Section 62 – Personal licence**

130. This section provides for the new personal licence. Each premises licence must name the “premises manager” for the premises. The application for the licence will have to contain information as to the proposed premises manager. In terms of the mandatory conditions in schedule 3, the premises manager will have to hold a personal licence. Other personal licence holders could be employed on the premises to help the premises manager out. A personal licence would permit that person to supervise and authorise sales of alcohol on the premises.

**Section 63 – Application for personal licence**

131. This section sets who can apply for a personal licence. This is any individual aged 18 years or more.

**Section 64 – Notification of application to chief constable**

132. This section places a duty on Licensing Boards to notify the chief constable of all applications received for personal licences. This is a key element of the new licensing system in that, when considering granting personal licences, it is important that an effective system is in place to enable Boards to ascertain whether or not someone is a suitable person to hold a licence. In that respect, to be eligible for a personal license a person must not have been convicted of any relevant or foreign offence. This is a change from the current test under the 1976 Act of being a “fit and proper person”.

133. Subsections (2) and (3) provides that the chief constable should respond, within 21 days, with information as to whether or not the applicant has any convictions for a relevant or foreign offence.

134. Subsection (4) provides that where a chief constable finds that an applicant has a conviction for a relevant or foreign offence then he may recommend to the Licensing Board that the personal licence application in question should be refused, if he thinks it necessary to do so for the purposes of the crime prevention objective.
Section 65 – Determination of personal licence application

135. This section sets out the procedure that Licensing Boards must undertake when considering personal licence applications, and following receipt of the chief constable’s response under section 64.

136. Subsection (2) provides that where all the conditions set out in subsection (3) are met, and there are no convictions, then the Licensing Board must grant the personal licence to the relevant person. If a condition of subsection (3) is not met the application must be refused. The conditions in subsection (3) require the applicant to be 18 or over, to hold a licensing qualification and not to have forfeited a personal licence within the preceding 5 years.

137. Subsection (5) provides that, in the circumstances where all the conditions in subsection (3) have been met, but the Licensing Board has received notice from the chief constable that the applicant has been convicted of a relevant or foreign offence, then the Board must hold a hearing so that the licence application can be considered in light of the details in the notice received from the chief constable. The circumstances thereafter under which the Boards should consider granting or refusing the licence application are set out in subsection (6). The Board therefore is not bound to refuse the licence just because of the existence of a relevant or foreign offence.

Section 66 – Applicant’s duty to notify Licensing Board of convictions

138. This section places a duty on the applicant for a personal licence to inform the Licensing Board to whom they have made the application of any relevant or foreign offence that they have been convicted of in the period between making their application and it being determined by the Licensing Board.

139. Subsection (2) provides the time limit within which the applicant must notify the Licensing Board with the information set out in subsection (3).

140. The Licensing Board must suspend consideration of the application and, in the meantime, pass the notice of conviction to the chief constable. The chief constable must, within 21 days, check the conviction and whether it relates to a relevant offence or foreign offence and respond accordingly to the Licensing Board. Subsection (6) sets out the mandatory requirement for such notices to be given by chief constables.

141. Where chief constable confirms the existence of the conviction and that it is for a relevant or foreign offence, the chief constable may recommend to the Licensing Board that, in the interests of the crime prevention licensing objective, the licence application should be refused.

142. The Licensing Board must resume consideration of the application on receipt of the chief constable’s response and determine it in accordance with section 65.
Section 67 – Issue of licence

143. This section provides for the issue of a licence by the Licensing Board on the granting of an application. Subsection (2) sets out the minimum content of the personal licence. Subsection (3) ensures that an individual may hold one personal licence at a time.

Section 68 – Period of effect of personal licence

144. Personal licences will be valid for 10 years with the possibility of renewals for further periods of 10 years. Subsection (4) ensures that periods of suspension count towards the 10 year period. The Licensing Board must let personal licence holders know when their licences are about to expire.

Section 69 – Renewal of personal licence

145. This section sets out the steps an individual must take to apply for the renewal of a personal licence. Applications for renewal are to be made to the Licensing Board which originally granted the licence. Subsection (2) provides that applications for renewal can only be lodged within a two-month period beginning three months before the licence’s expiry. Subsection (5) provides that the procedure outlined under sections 64 and 65 applies to renewals as it does to the grant of the personal licences.

Section 70 – Notification of determinations

146. This section places a duty on Licensing Boards to notify the applicant and appropriate chief constable of any decision to grant or refuse an application. Subsection (3) provides that Licensing Boards must explain their decision to the chief constable in cases where they have granted a licence and an objection notice was given by the police. Where an application has been refused, reasons must be given to the applicant and the chief constable.

Section 71 – Duty to notify court of personal licence

147. Where someone who holds a personal licence is charged with a relevant offence the person must, under this section, notify the court of the existence of the licence and produce the licence to the court. Anyone who fails to comply with these requirements would be guilty of an offence. This notification will help the courts identify those cases to which section 72 applies.

Section 72 – Court’s duty to notify Licensing Board of convictions

148. This section sets out the obligations of the court to the relevant Licensing Board where a personal licence holder is convicted of a relevant offence. The clerk to the court must notify the relevant Licensing Board within the time period specified the nature of the conviction.

149. Subsection (3) provides that where the Licensing Board receives notice from the courts, but the personal licence holder in question is working in another Board’s area, then the Licensing Board which received the notice must provide that other Licensing Board with the required information.
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

Section 73 – Licence holder’s duty to notify Licensing Board of convictions

150. This section requires that, where the holder of a personal licence is convicted of a relevant offence or foreign offence, the holder must, within one month, notify the Licensing Board which issued the licence and, if different, the Board for the area in which the licence holder is working, of the conviction. Where a Licensing Board receives a notice under this section and has reason to believe that the licence holder is working in the area of another Board, the receiving Board must notify that other Board of the conviction.

151. Subsection (3) sets out the mandatory requirements for the content of such notices of conviction and what information must accompany those notices.

152. Subsection (5) provides that failure to comply with this section is an offence.

Section 74 – Procedure where Licensing Board receives notice of conviction

153. This section sets out the procedure to be followed when a Licensing Board receives notice that a personal licence holder has been convicted of a relevant or foreign offence. It is primarily for the Licensing Board for the area in which the licence holder is working to take action under this section. But if the licence holder is not working in any licensed premises then it will be for the Licensing Board which issued the personal licence to take action.

154. Under this section, the Licensing Board must notify the appropriate chief constable of the conviction. The chief constable must check the conviction and whether it is for a relevant or foreign offence and must reply accordingly within 21 days. Where the conviction is confirmed and it is for a relevant or foreign offence, the chief constable may recommend revocation, suspension or endorsement of the licence.

155. If the chief constable confirms the conviction the Licensing Board must hold a hearing.

156. Subsections (8) and (9) provide a power for Licensing Boards, should they decide to take action against the personal licence holder to revoke, suspend or endorse the licence. When making such an order they must give notice of this, and their reasons for making it, to those persons listed in subsection (10)(a) to (c).

Section 75 – Conduct inconsistent with the licensing objectives

157. This section provides the procedure that Licensing Boards must adopt when, in the course of reviewing a premises licence under section 36 of the Bill, the Board finds that a personal licence holder was acting on the premises in question in a manner that was not consistent with the licensing objectives established by this Bill.

158. Subsections (3) to (5) provide that if the situation in subsection (1) applies then a hearing must be held by the Licensing Board for the area in which the personal licence holder is working or, if the licence holder is not working, by the Licensing Board which issued the personal licence. There is provision requiring the Licensing Board making the finding to notify the Licensing Board which is to hold the hearing, if it is different.
159. Subsections (6) and (7) provides a power for the Licensing Board holding the hearing to revoke, suspend or endorse the personal licence holder’s licence if satisfied that it is necessary to do so for the purposes of any of the licensing objectives.

160. Subsection (8) places a duty on the Licensing Board to give notice of the making of an order to those persons listed in paragraphs (a) to (c).

Section 76 – Expiry of endorsements

161. This section provides for the expiry of endorsements of a personal licence after 5 years. An endorsement for this purpose is an endorsement made in pursuance of an order endorsing the licence made by a Licensing Board.

162. Subsection (3) permits the personal licence holder who has an endorsement on their licence to apply to the relevant Licensing Board, once the endorsement has expired, to have it removed. Where a Licensing Board receives such an application they must remove the endorsement if it has expired.

163. An expired endorsement is to be disregarded whether or not is has been removed from the licence.

Section 77 – Suspension of licence after multiple endorsements

164. This section provides that when a personal licence holder receives 3 endorsements to their licence under sections 74 or 75 of the Bill the Licensing Board which issued the licence must hold a hearing to consider what action should be taken against the licence holder.

165. Subsection (3) provides sanctions that could be taken against the personal licence. These are suspension of the licence for up to 6 months or revocation of the licence.

Section 78 – Licence holder’s duty to undertake training

166. This section makes it mandatory for all personal licence holders to undertake prescribed training every 5 years and to provide the relevant Licensing Board with evidence that they have undertaken this training. Should a personal licence holder fail to undertake the necessary training they would have their personal licence revoked.

167. Subsection (2) places a duty on Licensing Boards to inform personal licence holders of this requirement within the time period specified in this subsection.

168. Subsections (1) and (4) provide a power for the Scottish Ministers to set out the details of the required training in regulations.
Section 79 – Notification of change of name or address

169. This section provides that the holder of a personal licence must notify the relevant Licensing Board of any change of name or address within one month and must enclose the information specified in subsection (2) with such notice. Failure to do so would be an offence.

Section 80 – Licensing Board’s duty to update licence

170. Where certain changes have been made to the terms or effect of a personal licence, (for example, where it has been renewed, suspended or a change of details has been notified), the Licensing Board must make the necessary amendments to the licence.

171. The Licensing Board may require the personal licence holder to present the licence for amendment within 14 days. Failure by the licence holder to comply with this obligation, without reasonable excuse, is an offence.

Section 81 – Power to specify which Licensing Board is to exercise functions under this Part

172. This is a general power permitting the Scottish Ministers by way of an order to re-determine which Licensing Board is the relevant one to carry out the functions of this Part of the Bill.

Section 82 – Power to prescribe licensing qualifications

173. This section provides power for the Scottish Ministers to set out in regulations the mandatory requirement for qualifications required to obtain a personal licence. Different qualifications could be prescribed in relation to different types of licensed premises. Someone could act as the premises manager for a particular type of licensed premises only if they hold the appropriate qualification prescribed for that type of premises (see paragraph 4(1)(d) of schedule 3).

Section 83 – Theft, loss etc. of personal licence

174. This section permits personal licence holders to apply to the Licensing Board that issued the licence for a copy of the licence if it has been lost, stolen, damaged or destroyed. Where a Licensing Board receives such an application they would be under a duty to issue a replacement if the conditions set out in subsection (2) are met. If the licence was lost or stolen, this must be reported to the police before a copy would be issued. The Bill applies to a copy in the same way as it applies to the original.

Section 84 – Licence holder’s duty to produce licence

175. This section applies where the holder of a personal licence is working on licensed premises. A constable or Licensing Standards Officer may require the holder to produce his or her personal licence. Failure to produce it would be an offence.
PART 7 – CONTROL OF ORDER

Section 85 – Exclusion orders

176. The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides for the criminal courts to make an exclusion order against a person found guilty of an offence committed on licensed premises (other than an off-licence). This section replaces the 1980 Act which is repealed in its entirety by the Bill.

177. This section applies where a person is convicted of a violent offence committed on, or in the immediate vicinity of, any licensed premises (other than premises which have only an occasional licence). It also introduces a new civil procedure for a premises licence holder to apply through the civil courts for an exclusion order.

178. Subsection (2) provides a power for the criminal court, when convicting the person of the violent offence, to make an exclusion order against the person.

179. Further to the powers provided for criminal courts in subsection (2), subsection (3) provides an additional power under which the holder of the premises licence for the premises concerned may, by summary application to the sheriff made within 6 weeks of the conviction, seek an exclusion order against the person. Subsections (4) and (5) set out the conditions that must be considered by the sheriff and if he is satisfied that they are met then he may grant the exclusion order.

180. An exclusion order prohibits the person convicted from entering the licensed premises concerned without the consent of the premises licence holder or someone authorised by the licence holder to give consent. An exclusion order made by the criminal courts can also exclude the person from other licensed premises.

181. Subsection (7) provides that an exclusion order may have effect for a maximum of 2 years.

Section 86 – Breach of exclusion order

182. This section provides that it would be an offence for a person subject to an exclusion order to breach that order and sets out in subsection (2) what sanctions may be taken against them.

183. Subsection (3) provides a discretionary power for the court to vary or terminate the exclusion order.

184. Subsections (4) and (5) provide a power for the premises licence holder or a constable to remove the person breaching the exclusion order from the licensed premises.
Section 87 – Exclusion orders: supplementary provision

185. This section provides that an exclusion order may still be made where an absolute discharge is given under section 246(3) of the Criminal Procedure (Scotland) Act 1995.

186. Subsection (3) places a duty on the clerk of the court or the sheriff clerk to send a copy of the exclusion order to the premises licence holder.

Section 88 – Closure orders

187. Subsection (1) provides a power for Licensing Boards, on application from a senior police officer, by order to close any licensed premises if disorder is imminent and closure is necessary for public safety.

188. Subsection (2) provides a power for a senior police officer to make an order to authorise immediate closure of licensed premises under the same conditions but only if the risk to public safety is such that immediate closure is necessary. An order made by senior police officer is referred to as an “emergency closure order” and has effect for no more than 24 hours.

Section 89 – Termination of closure orders

189. This section places a duty on the appropriate senior police office to terminate any closure order, whether made by them or a Licensing Board, where it is no longer necessary for public safety. The premises licence holder can also apply to the Licensing Board for termination of a closure order.

Section 90 – Extension of emergency closure order

190. This section provides a power for a senior police officer to extend the duration of emergency exclusion orders if the conditions set out in subsection (2) are met.

191. Subsection (3) provides that extensions to closure orders made under this section cannot come into force unless the appropriate constable has notified a responsible person in relation to the premises.

Section 91 – Regulations as to closure orders

192. This section gives the Scottish Ministers a power by regulation to make further provision as to the procedure to be followed in connection with the making of closure orders and extensions to closure orders.

PART 8 – OFFENCES

Section 93 – Sale of alcohol to a child or young person.

193. This section makes it an offence for anyone to sell alcohol to children or young people anywhere. This is a widening of the existing offence provided for in section 68 of the Licensing
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(Scotland) Act 1976, which is restricted to the licence holder, his employee or agent in licensed premises.

194. Subsection (2) provides a defence if the seller believed that the purchaser was 18 or over and either he took all reasonable steps to establish the purchaser’s age or nobody could reasonably have suspected from the purchaser’s appearance that he was under 18.

195. Subsection (3) further provides what “reasonable steps” are. The seller would be deemed to have taken all reasonable steps if they had seen evidence of that person’s age and that evidence would have convinced a reasonable person. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence would fail.

Section 94 – Allowing the sale of alcohol to a child or young person

196. This section deals separately with “allowing” the sale of alcohol to children or young people. It applies only to sales on “relevant premises” by “responsible persons”. “Relevant premises” is defined in section 114 and means basically any premises on which alcohol is lawfully sold. “Responsible person” is also defined in section 114 of the Bill. It has different meanings in relation to different types of premises and covers basically those with some responsibility for sales of alcohol. It also includes anyone over 18 who works on the premises and who has authority to prevent the sale.

Section 95 – Sale of liqueur confectionery to a child

197. This section makes it an offence to sell liqueur confectionery to a child under 16. Subsection (2) provides a defence if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser’s age or if nobody could reasonably have suspected from the purchaser’s appearance that he was under 16.

198. Subsection (3) provides that the accused would be deemed to have taken “all reasonable steps” if he was shown evidence of the individual’s age and that evidence was such that it would have convinced a reasonable person.

Section 96 – Purchase of alcohol by or for a child or young person

199. Subsection (1) makes it an offence for a child or young person to buy or attempt to buy alcohol whether or not on licensed premises.

200. Subsection (2) makes it an offence for an adult to act as an agent for a child or young person in purchasing or attempting to purchase alcohol (for example, if a child gives money to an adult to buy alcohol on their behalf). It is also an offence to buy alcohol for a child or young person to consume on relevant premises. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.
201. Subsection (3) provides that it would not be an offence to buy beer, wine, cider or perry for a person aged 16 or 17 to consume with a table meal on relevant premises.

**Section 97 – Consumption of alcohol by a child or young person**

202. Subsection (1) makes it an offence for a child or young person knowingly to consume alcohol on relevant premises.

203. Subsection (2) also makes it an offence for a responsible person knowingly to allow the consumption of alcohol by a child or young person on relevant premises.

204. Subsection (3) provides that the offences in this section will not be committed where a 16 or 17-year-old consumes beer, wine, cider or perry with a meal.

**Section 98 – Unsupervised sale of alcohol by a child or young person**

205. This section provides that it would be an offence for a responsible person to knowingly allow a child or young person to sell, supply or serve alcohol, unless the alcohol is for consumption off the premises or is for consumption with a meal and (in either case) the sale is specifically authorised by someone aged 18 or over.

**Section 99 – Delivery of alcohol by or to a child or young person**

206. This section relates to off-sales. Subsections (2) and (3) make it an offence for any responsible person to allow someone under the age of 18 to deliver alcohol from such a premises or to deliver alcohol, or allow it to be delivered, to someone under 18.

207. Subsections (4) and (5) provide for exemptions. The offence would not apply where the child or young person delivering or taking delivery works at the relevant premises, or at the place of delivery, in a capacity which includes the delivery of alcohol. An example of this would be where a young person is helping out in a family business, or works at a reception desk at the place of delivery. In addition, alcohol may be delivered to a child or young person where it was bought for delivery to the home or workplace.

**Section 100 – Sending a child or young person to obtain alcohol**

208. This section provides that it would be an offence to send a child or young person to obtain alcohol which is sold for consumption off the premises. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone.

209. Subsection (2) provides that the offence will be committed regardless of whether the child or young person is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent.

210. Subsection (3) provides that the offence will not be committed where the child or young person works at the premises in question and his job involves taking deliveries of alcohol.
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Section 101 – Duty to display notice

211. This section provides that it would be a statutory requirement that there must be displayed on all relevant premises (defined in section 114) in a prominent place at all times a notice stating that it is an offence for a person under the age of 18 to buy or attempt to buy alcohol on the premises or for a person to buy alcohol on their behalf. The notice must also contain a statement as to the “no proof – no sale” requirement.

212. The form and size of the notice will be set out in regulations.

213. Subsection (4) provides that it would be an offence for anyone specified in subsection (5) relating to the premises in question, not to display such a notice.

Section 102 – Drunk persons entering or in premises on which alcohol is sold

214. This section provides that it would be an offence for a drunk person to attempt to enter any relevant premises (defined in section 114 – basically any premises on which alcohol is lawfully sold). It also makes it an offence for a person, whilst on relevant premises, to be drunk and incapable of taking care of himself or herself. A person committing an offence under this section can be arrested without warrant by the police.

Section 103 – Obtaining of alcohol by or for a drunk person

215. This section provides that it would be an offence for any person to buy or attempt to buy alcohol for someone who is drunk or to help a drunk person to obtain or consume alcohol. The offences only apply where the alcohol is to be consumed on relevant premises.

Section 104 – Sale of alcohol to a drunk person

216. This section provides that it would be an offence for any responsible person working on relevant premises to sell alcohol to someone who is drunk.

Section 105 – Premises manager, staff etc. not to be drunk

217. This section provides that it would be an offence for any responsible person (ie the premises manager and anyone else who works on relevant premises) to be drunk on the premises.

Section 106 – Disorderly conduct

218. Subsection (1) provides that it would be an offence for any person to behave in a disorderly manner or to annoy others with offensive language on relevant premises.

219. Subsection (2) provides that it would be an offence for any responsible person in relation to relevant premises to allow disorderly conduct on the premises. Subsection (3) provides a “due diligence” defence for a person charged with an offence under subsection (2).
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220. Subsections (4) and (5) confirm the penalties for offences committed under this section.

Section 107 – Refusal to leave premises

221. This section makes it an offence for a disorderly person to refuse to leave relevant premises when asked or for any person to refuse to leave licensed premises at closing time when asked. Subsection (3) gives the police a power to assist in removing someone committing an offence under this section.

Section 108 – Offences relating to sale of alcohol by wholesale

222. This section provides that it would be an offence for a wholesaler to sell alcohol from premises not used only for that purpose. “Wholesale” and “wholesaler” are defined, for the purposes of this Bill in section 137.

Section 109 – Prohibition of sale of alcohol on moving vehicles

223. This section deals with for example “party buses” and “stretch limousines” that currently provide alcohol. It makes it an offence for any person to knowingly sell alcohol on any vehicle whilst it is moving. “Vehicle” is defined in section 137 and basically means any road vehicle.

Section 110 – Delivery of alcohol from vehicles etc.

224. This deals with deliveries of alcohol and would provide that all such deliveries and carrying of alcohol in vehicles is properly and clearly recorded.

Section 111 – Carriage of alcohol on public service vehicles

225. This section deals with the carrying of alcohol on hired public service vehicles. It restricts the amount of alcohol that can be allowed to be carried onto the bus or coach to 3.5 litres. The holder of the PSV licence for the bus or coach and employees and agents of the licence holder are made primarily responsible for ensuring compliance with this section. But anyone who tries to persuade a PSV licence holder or his employee or agent to allow alcohol to be taken on to a bus or coach in breach of this section also commits an offence.

Section 112 – Prohibition of late-night deliveries of alcohol

226. This section deals with off-sales and provides that it would be an offence for anyone who works on these licensed premises to deliver alcohol between 12 midnight and 6 am and also an offence for any responsible person to allow such a delivery.

Section 113 – Keeping of smuggled goods

227. This section provides that it would be an offence knowingly to keep or allow to be kept on any licensed premises any illegally imported goods.
228. Subsection (3) provides a power for the courts to order the forfeiture or destruction of goods kept in breach of subsection (1).

PART 9 – MISCELLANEOUS AND GENERAL

Section 115 – Excluded premises

229. This section provides that those premises described in subsection (2) would be excluded from the new licensing regime, and as such the sale of alcohol would not be permitted on these premises. Paragraph (a) is intended to cover motorway service areas and paragraph (b) covers petrol stations and garages. Subsection (5) provides a power for the Scottish Ministers to amend the list of excluded premises by way of regulations.

Section 116 – Exempt premises

230. This sets out those premises which are to be exempt from the requirement to hold a licence under the Bill. An “examination station” at any airport is basically the area beyond the security check-in.

Section 117 – Special provisions for certain clubs

231. This section deals with clubs. At present clubs are regulated under Part VII of the Licensing (Scotland) 1976 Act by virtue of registration granted by a sheriff. This system was first introduced by the Licensing (Scotland) Act 1903. That system is repealed by the Bill. Instead, the general licensing regime will apply to clubs as it applies to other premises, subject to the provisions in this section.

232. Subsections (1) provides a power for the Scottish Ministers to prescribe categories of clubs that would be exempt from the application of those provisions of the Bill listed in subsection (2). The general effect is that such clubs would not need to have a premises manager and the overprovision ground of refusal would not apply. Subsection (3) permits the Scottish Ministers to prescribe different descriptions of clubs for the purposes of different provisions set out in subsection (2).

233. Subsections (4) confers power on the Scottish Ministers to provide for further modifications of the Bill as it applies to such categories of clubs as they may specify.

Section 118 – Vessels, vehicles and moveable structures

234. “Premises” for the purposes of the Bill includes vessels, vehicles and other moveable structures. In the case of vessels, this section effectively provides for the “home port” of the vessel to be treated as the place where it is situated. That means, for example, that it would be the Licensing Board for that port that would have jurisdiction to grant a licence for the vessel.

235. In the case of vehicles and other moveable structures, this section effectively means that, where alcohol is to be sold on or from the vehicle etc. while it is parked somewhere, a separate licence will be needed for each such place.
Section 119 – Power to prohibit sale of alcohol on trains

236. Subsections (1) and (2) provide for the prohibition of the sale of alcohol at specified stations or on any train travelling between specified stations for a specified period. An order made under this section may be made by a sheriff on application by a senior police officer, if the sheriff is satisfied that the order is necessary for the prevention of disorder.

237. Subsection (3) requires the senior police officer who applied for the order to serve a copy of the order on the train operator or operators concerned.

238. Subsection (4) provides that it would be an offence for anyone knowingly to sell alcohol, or to permit its sale, in contravention of such an order.

Section 120 – Relevant offences and foreign offences

239. This section provides a definition of the term “foreign offence” used for the purposes of this Bill and provides a power for the Scottish Ministers to set out by way of regulations a list of “relevant offences” for the purposes of this Bill.

Section 121 – Effect of appeal against conviction for relevant or foreign offence

240. This section provides that the duties placed on Licensing Boards under this Bill relating to relevant and foreign offences may still be carried out if the conviction is subject to appeal but the Board has discretion to postpone their action.

241. Subsection (3) provides that the Board’s actions will have no effect if the conviction is overturned on appeal.

Section 122 – Appeals

242. This section provides that any person who makes an application to a Licensing Board under the provisions of this Bill may appeal by way of stated case to the sheriff principal. This section also provides that, in the case of a decision taken on review of a premises licence, the holder of the licence also has a right of appeal.

243. Subsection (3) sets out that appeals will ordinarily be by way of stated case to the sheriff principal. However, under subsection (4), an appeal against an immediate suspension of a licence can be made by way of summary application to the sheriff, which is a quicker procedure.

244. Subsection (5) establishes the grounds on which appeals could be made.

245. Subsection (7) sets out the powers of the sheriff or sheriff principal where an appeal made under this section is upheld.
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Section 123 – Appeals: supplementary provisions

246. This section sets out those procedural matters relating to appeals made under section 122 and provides that any further procedural matters that might be required would be prescribed by Act of Sederunt.

Section 124 – Hearings

247. This section provides that any hearing held under the provisions of this Bill must be held at a meeting of the Licensing Board. It also provides a power for the Scottish Ministers to make regulations that would set out all other procedural matters relating to any hearing held under the provisions of this Bill including those matters set out in subsection (3).

Section 125 – Form etc. of application and notices

248. This section provides a power for the Scottish Ministers to make regulations that would set out the form and content of applications and notices made or given under the Bill and the manner in which they are to be made or given.

Section 126 – Power to relieve failure to comply with rules and other requirements

249. This section provides a power for Licensing Boards to overlook any procedural failing and thus enable them to deal with applications etc. despite procedural requirements not having been met.

Section 127 – Fees

250. This section provides a power for the Scottish Ministers to make regulations that would enable fees to be charged by Licensing Boards.

251. Subsection (3) places a duty on the Scottish Ministers to consult with those persons listed in paragraphs (a) and (b) before making any such regulations under this section.

252. Subsection (4) establishes that a Licensing Board need not carry out any of its functions relating to the application for which fees are payable until they are paid. Subsections (5) and (6) set out who fees should be payable to. Ultimately, fee income will be paid over to the councils.

Section 128 – Inspection of premises before grant of licence etc.

253. This section provides a power for Licensing Standards Officers and the police to enter premises at any time in those circumstances linked to a relevant application or review, provided for in subsection (1), and if needed to use reasonable force to do so. This is for the purposes of assessing the likely effect on the promotion of the licensing objectives of the grant of the application or the effect of the sale of alcohol under the licence. It also provides that anyone preventing those persons from undertaking this task would be guilty of an offence.
Section 129 – Police powers of entry

254. This section provides that a constable would have a lawful right of entry to any licensed premises and to any other premises where he has reason to believe alcohol is being sold in breach of section 1(1) of the Bill.

255. Subsection (4) establishes the conditions under which a police officer below the rank of inspector may enter the premises.

256. Subsection (5) provides that it would be an offence for anyone to obstruct the police in the carrying out of their functions under this section.

Section 130 – Remote sales of alcohol

257. This section deals with situations where alcohol is delivered from a different place from that where order for the alcohol is placed. Subsection (1) and (2) provide that where the place of despatch is in Scotland, the sale is treated as having happened at that place. For example, when alcohol is bought via mail order or a telephone call centre and sent out for delivery from a separate warehouse, the sale would, for the purposes of this Bill, be treated as having taken place at the warehouse and not the call centre. The requirement for a premises licence would, therefore, apply to the warehouse rather than the call centre.

258. Subsections (3) and (4) provide a power for the Scottish Ministers to provide for the regulation of the converse scenario ie where the alcohol is ordered in Scotland but delivered from a warehouse outside Scotland.

Section 131 – Presumption as to liquid contents of containers

259. This section establishes a presumption relating to the contents of a container. This basically means that, for the purposes of a trial for an offence under the Bill, any liquid found in a container is to be presumed to be the liquid that the label on the container suggests it is. This section replicates what was previously provided for in the Licensing (Scotland) Act 1976 relating to such matters.

260. Under subsection (4) the presumption can be rebutted, but notice of intention to lead evidence to rebut the presumption must be given. The prosecution or defence may wish to rebut the presumption. For example, the defence may want to prove that the contents of what appears to be a bottle of alcohol was not in fact alcohol and the prosecution may want to prove that the contents of what appears to be a bottle of coca cola was in fact alcohol.

Section 132 – Offences by bodies corporate etc.

261. This section deals with offence committed by companies, partnerships and other bodies. It effectively provides for certain persons responsible for the management or control of these bodies to share criminal responsibility for offences committed with their consent or connivance or due to their neglect.
Section 133 – Guidance

262. This section provides a power for the Scottish Ministers to issue guidance to Licensing Boards. It also allows the Scottish Ministers to modify any guidance given by them. Subsection (5) places a duty on the Scottish Ministers to lay a draft of the first set of guidance to Licensing Boards before the Parliament and confirms that the guidance would be subject to the affirmative resolution parliamentary procedure. Subsection (6) provides that any subsequent guidance issued must be laid before the Parliament.

Section 134 – Crown application

263. This section makes it clear that the provisions of the Bill apply to Crown bodies as they apply to everyone else. So, for example, a licence is required for the sale of alcohol on any properties managed by Historic Scotland.

Section 135 – Ancillary provision

264. This section allows the Scottish Ministers to make ancillary provision in statutory instruments in consequence of this Bill. This power will, for example, be used to make transitional provision and further consequential modifications.

Section 136 – Orders and regulations

265. This sections sets out the parliamentary procedure in relation to orders and regulations made by the Scottish Ministers under the provisions of the Bill.

Section 137 – Interpretation

266. This section defines certain terms used throughout this Bill.

Section 138 – Index of defined expressions

267. This section provides an index indicating where definitions of specific terms used throughout the Bill can be found.

Section 139 – Repeals

268. This section introduces schedule 5 to the Bill which contains repeals of enactments.

Section 140 – Short title and commencement

269. This section provides for commencement by order.

SCHEDULE 1

270. This schedule sets out procedural matters relating to the membership and other administrative matters for Licensing Boards provided for by section 5 of the Bill.
271. *Paragraph 1* provides for the maximum and minimum numbers of members of Licensing Boards and that they should be councillors and provides for the membership of Boards for Licensing Divisions.

272. *Paragraph 2* sets out the arrangements for the election of Licensing Boards by local councils and includes provision on elections to fill vacancies.

273. *Paragraph 3* provides the circumstances in which councillors would be disqualified from membership of Licensing Boards.

274. *Paragraph 4* establishes the duration for membership of Licensing Boards and also provides that a member may seek re-election, or resign at any time, and also sets out the circumstances when a member would cease to hold office. *Paragraph 5* provides for the removal of members.

275. *Paragraph 6* makes provision for the election of a convener for each Licensing Board. It establishes the duration of office of the convener, including their eligibility for re-election. It provides that the convener may resign at any time and also provides when they would cease to hold office. *Paragraph 7* makes provision for the removal of the convener.

276. *Paragraph 8* requires the local councils to appoint clerks for the Licensing Boards and to provide other staff, property and services that would be required to enable the Boards to carry out their functions. *Paragraph 9* enables the Board to establish committees.

277. *Paragraph 10* provides a power for Licensing Boards to delegate their functions under this Bill, apart from those functions set out paragraph 10(2), to any of those persons listed in paragraph 10(1).

278. *Paragraph 11* provides that it would be mandatory under this Bill for all members of Licensing Boards to undertake the required training within 3 months of appointment and that they could not take part in any Board proceedings until they had undertaken the required training. Failure to do so would result in the member of the Board having to leave office. It also provides a power for the Scottish Ministers to make regulations prescribing the training requirements.

279. *Paragraph 12* establishes the procedure that Licensing Boards would have to operate when conducting meetings of the Boards. A power is provided for the Scottish Ministers to make regulations that would set out further provisions relating to proceedings of Licensing Boards. Any other matters not so provided for would be determined by Licensing Boards themselves by way of rules.

280. *Paragraph 14* makes transitional provision. It provides that existing members of Licensing Boards elected under the provisions of the Licensing (Scotland) Act 1976 would continue to hold office until the new elections are held. This would ensure continuity of membership until such time as this Bill comes into force and new members are elected following the first local government elections held whilst this Bill is in force.
SCHEDULE 2

281. This schedule sets out the membership, administration and other procedural matters relating to Local Licensing Forums established under section 10 of this Bill.

282. Paragraph 2 makes provision as to the membership of the Forums and seeks to ensure that the membership is as representative as possible of the interests of those persons listed in paragraph 2(5)(a) to (e). It also provides that the relevant local authority may determine the terms and conditions for membership of Local Licensing Forums.

283. Paragraph 3 establishes the procedure for the election of conveners for Local Licensing Forums.

284. Paragraph 4 places a duty on local authorities to provide the Local Licensing Forums with administrative support.

285. Paragraph 5 sets out that the Forums must hold at least 4 meetings per year.

SCHEDULE 3

286. This schedule establishes the national mandatory licence conditions for premises licences issued under the Bill, ensuring national consistency on those issues provided for.

287. Paragraphs 2 and 3 ensure compliance with the operating plan which accompanies the premises licence application under section 19(2) of this Bill.

288. Paragraphs 4 ensure that each licensed premises has a premises manager who holds a valid personal licence. Paragraph 5 ensures that sales of alcohol are overseen by the premises manager or someone else holding a personal licence.

289. Paragraph 6 establishes that it would be a mandatory requirement for all persons who are involved in the sale or serving of alcohol to undertake the required training. This paragraph also provides a power for the Scottish Ministers to make regulations prescribing the mandatory training.

290. Paragraph 7 applies only to on-sales and provides that it would be a mandatory requirement that the prices of alcohol would have to be fixed for at least 48 hours. This precludes “happy hours”.

291. Paragraph 8 applies only to on-sales and establishes national licence conditions prohibiting irresponsible drinks promotions. These conditions are aimed at reducing the problems of binge drinking and under-age drinking. A power is provided for the Scottish Ministers to add to the list of proscribed promotions.

292. Paragraph 9 applies only to on-sales and requires non-alcoholic drinks to be made available.
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

293. Paragraph 10 ensures that annual fees are paid. Non-payment of fees will accordingly be a breach of licence conditions.

SCHEDULE 4

294. This schedule establishes the national mandatory licence conditions for occasional licences issued under the Bill, ensuring national consistency on those issues provided for. The conditions are similar to those for premises licences.

295. Paragraphs 2 and 3 ensure compliance with the terms of the occasional licence issued under section 53 of this Bill.

296. Paragraph 4 applies only to occasional licences issued to persons who a premises or personal licence and requires sales of alcohol to be supervised by someone who holds a personal licence.

297. Paragraph 5 applies only to occasional licences issued to voluntary organisations and ensures that alcohol may only be sold at events run in connection with the organisations’ activities.

298. Paragraph 6 requires the price of alcohol to be fixed for at least 48 hours. This prohibits “happy hours”.

299. Paragraph 7 establishes national licence conditions relating to irresponsible promotions. These conditions are aimed at reducing the problems of binge drinking and under-age drinking. A power is provided for the Scottish Ministers to add to the list of proscribed promotions.

SCHEDULE 5

300. This schedule sets out those enactments, sections of enactments and Parts of enactments that are to be repealed by the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

301. The proposals set out in this Bill would modernise the present licensing regime which controls the sale of alcohol in Scotland. The proposals are underlined by a consistent philosophy provided through the licensing objectives and offer a balanced package which reflects the needs of individuals, communities, business and consumers. The Bill addresses the issues of how, when and where individuals can access alcohol within a framework that ensures that misuse of alcohol and spin off nuisance and crime are not fuelled by a lax licensing system. The Executive recognise that the majority of individuals drink responsibly and want to ensure that social drinking in Scotland can be enjoyed in a safe welcoming environment.
302. Alcoholic beverages are an important commodity bringing economic benefits to Scotland through their production and sale. Employment in the drinks and hospitality sector in Scotland amounted to 200,000 people (Pathfinder – Drinks and Hospitality, Scottish Executive, March 1999). Scotland benefits not only from the employment opportunities and economic benefits of brewing and distilling but also from the opportunities created in the retail sector of the hospitality industry, both by national chains and by successful independent Scottish companies. Some retailers and producers in Scotland are at the forefront of current best practice – they and all responsible members of the licensed trade in Scotland deserve support.

303. However, the Executive recognises that misuse of alcohol brings with it a substantial cost to society. This may amount to medical, psychological and social harm caused to individuals and their families by alcohol dependence or to the wider costs to communities caused by the other related consequences of irresponsible drinking such as intimidation, violent crime and traffic casualties. The cost imposed upon the NHS in Scotland at 2001/02 prices was £95.6 million, and the total cost to Scottish society was estimated to be £1.1 billion (‘Alcohol Misuse in Scotland Trends and Costs’, Scottish Executive, October 2001).

304. The Bill supports the Scottish Executive’s wider agenda of cracking down on binge drinking and underage drinking and the consequent antisocial behaviour and crime it can cause.

COSTS ON THE SCOTTISH ADMINISTRATION

305. Liquor licensing would continue to be administered locally by local authority Licensing Boards so centrally borne costs will be kept to a minimum. There would be some costs which are set out below.

306. Although not provided for in the Bill, the Executive is committed to establishing a new National Licensing Forum and some costs would be attached to this. In the first instance this Forum would be established as a Task Force and reviewed after around 18 months. The Forum would play a key role in keeping licensing law and practice under review and would contribute to the development of statutory guidance. The Forum should be in a position to respond to new challenges concerning the way people choose to drink and the market’s response. It would also bring a level of consistency which would be important as part of the national framework introduced by the Bill within which Boards will be required to operate. This type of forum already operates and works well – the Scottish Ministerial Advisory Committee on Alcohol Misuse (SMACAM) is a good example.

307. A public appointments process will take place to appoint Forum members, who are expected to be experts in the field and drawn from a range of interests including health interests, local authorities, the police and the licensed trade. The number of members is still to be determined but is likely to be at least 10. Forum members would be unpaid but would receive travel and subsistence costs. This might amount to £5,000 annually for 2-4 meetings. Scottish Ministers would chair the Forum meetings. Administrative support would be provided by Scottish Executive staff and would not require any additional resources.

308. The Forum would contribute to statutory guidance for Licensing Boards and there would be a cost to the Executive of printing and distributing that guidance. It is impossible to be
entirely accurate about this until the size of the document is known but can be expected to be at least £10,000. Publicity for the guidance may cost an additional £10,000.

309. The Scottish Executive would also undertake the production and publication of two leaflets:

- a basic guide to liquor licensing containing relevant information for both applicants and objectors,
- a guide for premises and personal licence holders.

310. Publication and distribution costs for these leaflets may amount to £10,000 per leaflet. Translation costs may amount to an additional £20,000. Costs for the Forum would commence during the financial year 2005/06 while the costs of the leaflet could be expected to fall within the financial year 2007/08.

Courts

311. The ability to appeal against Licensing Board decisions would be far more extensive under the new system. All decisions would be open to appeal and Boards would be required to demonstrate that decisions have been proportionate. Although this might be expected to increase the workload for the courts, we think this would be balanced out by other elements of the new system i.e. the need to consult on and publish a policy statement, statutory guidance from the Executive on the operation of the new system and more robust procedures which Boards would be expected to follow. This should reduce the occasions when there is a need for an appeal.

312. Savings would be made for the sheriff court, which would no longer deal with the registration of clubs. The Scottish Court Service running costs associated with the registration of clubs average £5,000 p.a. The cost, however, is distributed across the 49 sheriff courts, and thus it is not possible to identify a discrete resource which can be offered up in respect of this saving. Clubs would in future be wholly dealt with by Licensing Boards.

313. We estimate the cost to judicial salaries in respect of appeals to the sheriff principal to be £22,000 p.a. This can, however, be absorbed within existing resources. There would be a saving of £20,000 p.a. as a result of the repeal of the existing appeal to the sheriff. There is not, however, a discrete resource which can be offered up in respect of this saving. Rather, it would be applied to reducing the time taken to hear the remaining categories of business. The Scottish Court Service running costs associated with the new appeal provision are £6,500 p.a. These would, however, be directly offset by the saving arising out of the repeal of the existing provision, as there is no difference in respect of the resource demand of an appeal to the sheriff or sheriff principal. These figures are based on having 30 appeals a year (this being the average annual number of such appeals the Nicholson Committee found to be taking place in recent years).
COSTS ON LOCAL AUTHORITIES

Cost recovery

314. The Licensing regime is already a function carried out at local authority level by Licensing Boards. This would not change. Local authorities would continue to bear the ongoing costs of administrating the licensing process. There would of course be considerable changes to the framework of the new system although many of the administrative tasks required to administer that system would be similar e.g. processing applications against new statutory criteria, Board hearings, requesting views from the police, dealing with licence objections and representations and handling complaints. The costs of running the system would be recouped through the licensing fee. Fee levels are presently set centrally by the Scottish Ministers and this process would continue into the new regime. The Bill will enable the Minister through regulations to establish the fee payment structure, these regulations will be subject to consultation and a regulatory impact assessment. The cost of a basic licence to sell alcohol, which lasts three years, costs £172 whether the premises is a small shop selling miniatures to the tourist market or a large nightclub.

315. Due to geographical differences in the concentration and spread of licensed premises, Licensing Boards do not deal with a uniform number of applications. Licensing Boards currently process applications during statutory quarterly meetings and in the year up to 31 December 2003 would have dealt with approximately 15,921 applications and requests for extensions to licensing hours. Indications from some Licensing Boards are that the present fee levels do not adequately cover costs. The Executive have estimated from figures supplied by a sample of Boards that, on average, 42% of costs are not being met by the direct payment of the current level of fees.

316. Set out below as an example of the costs of the present licensing system is a table constructed from information supplied by boards, concerning the financial year 2002-03. The examples represent the Boards found within a local authority areas for a city, for two sizable rural authorities and for two small local authorities. The table lists the number of licences in force, the fees collected, an estimate of the costs in carrying out the licensing function for the authority and the specific advertising component of that cost.
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

Licensing Board costs

<table>
<thead>
<tr>
<th>Type of council</th>
<th>Number of licences</th>
<th>Total fee revenue</th>
<th>Cost of advertising</th>
<th>Total running cost (including advertising) of the licensing board</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>1,800</td>
<td>£301,200</td>
<td>£106,000</td>
<td>£375,500</td>
</tr>
<tr>
<td>Rural 1</td>
<td>740</td>
<td>£99,200</td>
<td>£20,000</td>
<td>£119,100</td>
</tr>
<tr>
<td>Rural 2</td>
<td>690</td>
<td>£100,300</td>
<td>£19,200</td>
<td>£120,700</td>
</tr>
<tr>
<td>Small 1</td>
<td>160</td>
<td>£34,400</td>
<td>£13,800</td>
<td>£48,700</td>
</tr>
<tr>
<td>Small 2</td>
<td>390</td>
<td>£67,00</td>
<td>£12,800</td>
<td>£125,200</td>
</tr>
</tbody>
</table>

317. To ensure that the system can be self financing, the Scottish Executive is commissioning a full fee review. The review’s remit is to estimate the potential costs to local authorities of administering the proposed liquor licensing regime and to propose a fee charging structure that enables the regime to be adequately funded through its fee collection. The research would:

- estimate the expected costs to local authorities of administering the new licensing regime, including those costs arising from transition;
- consider the fee options available and recommend an appropriate fee charging structure. The fee options examined would include the use of a banded fee structure where the banding is graduated by the rateable value of licensed premises and a single flat rate;
- provide an analysis of the financial impact of the various fee options on a sample of specific individual Scottish local authorities.

The review is expected to be complete by July 2005 at which time the Executive would expect to provide updated information to be read with this Financial Memorandum.

318. The tables below show the growth of liquor licences in force in Scotland since 1945 and the corresponding fee increases over a similar period. From 1953 to 1977 the fee stayed the same until the Licensing (Scotland) Act 1976 came into force and licensing was transferred to local authorities. Since 1977, in consultation with Cosla and the licensed trade, the Executive has increased fees by the cost of inflation only.
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

Number of liquor licences in force in Scotland

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ON-SALE</td>
<td>5,586</td>
<td>6,802</td>
<td>8,993</td>
<td>10,876</td>
<td>10,944</td>
</tr>
<tr>
<td>OFF-SALE</td>
<td>2,188</td>
<td>3,385</td>
<td>4,899</td>
<td>6,336</td>
<td>6,104</td>
</tr>
<tr>
<td>ALL LICENCES</td>
<td>7,774</td>
<td>10,187</td>
<td>13,892</td>
<td>17,212</td>
<td>17,048</td>
</tr>
</tbody>
</table>

Fee increases since 1953

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Full</td>
<td>£0.85</td>
<td>£50</td>
<td>£100</td>
<td>£120</td>
<td>£172</td>
</tr>
<tr>
<td>Renewal</td>
<td>£0.85</td>
<td>£25</td>
<td>£50</td>
<td>£60</td>
<td>£80</td>
</tr>
<tr>
<td>Regular extension of permitted hours</td>
<td>N/A</td>
<td>£25</td>
<td>£50</td>
<td>£60</td>
<td>£80</td>
</tr>
</tbody>
</table>

319. The Bill introduces 2 types of licence: the premises licence and the personal licence. The former would be held by the owner of the premises and the latter would be held either by an owner or by employees such as managers and supervisors. The main costs of running the system would be recouped through the premises licence fee. The Bill will continue the operation of the Occasional licence enabling licence holders to cater for events taking place outwith licensed premises. There is no information available on the amount of occasional licences presently granted each year.

320. Fees for a premises licence would need to increase to a more sustainable level to support the costs of the new system. The Executive expect the fee review to indicate what that level would be and to suggest a model based on graduated fees which will take into account the need to avoid unduly penalising small businesses. A ‘retention fee’ charged annually is also likely to be a necessary feature since premises licences under the new system would be open ended. This would help to ensure that there is a continuing income stream. Personal licence applications are likely to be subject to a fixed fee.

321. The following model is therefore likely:

- **Premises licence:**
  
  Application fee (graduated to allow for different sizes of business)
  Annual ‘retention’ fee at a lower level

- **Personal Licence:**
  
  Application fee
  Renewal fee (after 10 years)
Detailed costs

Licence applications and Board meetings

322. The new licensing system would abolish statutory quarterly licensing meetings and Boards would be empowered to organise their business in a way which suits them, including meeting as required. Licensing Boards would initially face an increase in work for the following reasons:

- existing licence holders (17,000 across Scotland) would require to submit applications to transfer to the new regime;
- registered members clubs are being brought within the licensing system – at present there are 2,349 clubs registered with sheriffs in Scotland;
- a new personal licence is being introduced – at least one person from each of the 17,000 existing premises would require to hold a personal licence.

323. A substantial decrease in workload would follow since some key elements of the existing system are not being replicated:

- there would be no licence renewal for the premises licence (licences are currently renewed every 3 years but would be open ended in future);
- there would be no requirement to apply for an annual renewal of extended opening hours (10,239 licensed premises applied for extended hours in 2002-03).

324. The Executive anticipate that, due to the removal of renewals and reapplications, Licensing Boards would no longer operate within a framework of statutory quarterly meetings. They could in future move to a system which would reflect the amount of work required of the Licensing Board members. This could reduce costs as a premises licence would no longer require renewal subsequently reducing the need for Board Hearings. This reduction though would depend on the number of new hearings concerning licence variations and complaints a Board might undertake.

Advertising costs

325. At present a notable expense in dealing with licence applications is the duty on the Licensing Board to advertise such applications in the local press. In 2002-03 the advertising costs to the City of Glasgow Licensing Board were £106,000. This contrasts with costs to the Perth and Kinross Board of £19,225. From a wider sample of Licensing Boards, advertising costs appear to account on average for 16% of a Board’s overall expenditure. This cost can be expected to reduce substantially under the new system.

326. Licensing Boards should have websites established by 2005, in line with existing Government targets for public sector organisations to have all those transactions capable of being dealt with electronically on-line. It is the Executive’s policy that, once websites are running, Boards should no longer be required to advertise in the local press. This is welcomed by Boards, not only for the cost implications, but also because it can be seen as an inefficient means of communication with the public.
327. Direct notification of neighbours, the community council, police and fire authorities would continue under the new system but would be carried out by Licensing Boards as opposed to the applicant as at present. This is therefore a new administrative cost on Boards and it is difficult to attach a specific figure to this. This task is being transferred to Boards for reasons of fairness and was a direct recommendation of the Nicholson Committee. Boards will require to establish the addresses (though not necessarily the names) of ‘neighbours’ within a radius of 50 metres using plans. This system already functions well in planning using a radius of 4m. We consider this to be insufficient for licensing as did the clear majority of respondents to the consultation.

Training

328. The new regime would require Licensing Board members to undergo training. This is not a requirement at present. Each Board would consist of a maximum of 10 members and such training would be likely to cost the Board between £550 to £1500. This figure is based on completing a ‘Servewise’ Course or the British Institute of Innkeeping’s Scottish Licensee’s Certificate at a current cost of £55 or £150 per member. Such costs would be expected to recur whenever a new licensing board member is appointed.

Policy statements

329. Boards would need to produce and consult on a statement of policy regarding licensing within their areas. This would be a triennial cost although the cost would be expected to reduce following the initial exercise. Boards would also need to undertake an overprovision assessment for their area. This means identifying whether there are some areas within a Board’s control which have reached saturation point in terms of the numbers and concentration of on sales or off sales or both. Some Boards already have such processes in place in relation to concerns that have arisen under the present regime. The concept is not a new one since overprovision has been a ground of licence refusal since 1976. However this is the first time that a proactive assessment has been required. The development of such polices is expected to be highly beneficial. They would clarify the Board’s thinking on suitable policies for their area and would be a visible record for the licensed trade of the approach a particular Board plans to take. It should also be advantageous to businesses looking to invest in the market to be able to assess a Board’s 3 year policy and to have a clear statement about the areas in which a Board would not propose to grant new licences.

330. The development of policy in general and on overprovision in particular would require a degree of time from Board staff so there will be an additional administrative cost. The Executive expects policies would be drawn up prior to the start of the transitional period for the new system. In England and Wales Local authorities were given six months to develop policies. The Executive would liaise with CoSLA and Boards on a suitable development and consultation period for Scotland which seeks to avoid placing unnecessary pressure on Board staff.

Local Licensing Forums

331. The new system proposes to establish Local Licensing Forums. Forums would include a range of interested parties allowing active participation from grass roots level in influencing the direction of local decision making. Forums would not comment on individual applications but would have a clear role in being consulted on the Board’s policy. The establishment of Forums
would be a duty of the local authority who will be required to make the appointments and ensure facilities are provided for meetings (at least 4 meetings per year). Many local authorities have already set up such bodies although they are voluntary at present. The Executive see this process involving minimum cost to the Local Authority. Costs would largely be those attached to providing a meeting room a minimum of 4 times per year. Local authorities may also decide to offer training to members of the Forum – Servewise training could be provided at a current cost of £55 per member.

**Monitoring and enforcement costs**

332. Recent years have seen a large increase in the number of different types of licensed premises ranging from off-sales and cafes to pubs and nightclubs. Correspondingly, a need has developed for regular compliance monitoring to be carried out. Traditionally, some monitoring and enforcement has been carried out by police forces. While the police would continue to exercise their customary role in relation to behaviour which constitutes a criminal offence in terms of licensing law, they cannot be expected to supervise a licensee’s compliance with the terms and conditions of a liquor licence. This gap would now be filled by new Licensing Standards Officers (LSOs) who would be responsible for the monitoring and enforcement of the new regime. LSOs would be empowered to mediate to resolve problems at local level, would deal with complaints and would report problem premises to the Licensing Board for action. They would of course liaise actively with the local police. Together with this supervisory function, LSOs would also look to act in an advisory capacity, advising licence holders and helping to raise standards in an effort to prevent underage and binge drinking.

333. Whilst it would be mandatory for each local authority to appoint one LSO, the number required to cover the authority’s area would be a matter for them. The minimum number appointed in Scotland would be 32, one for each local authority. The Nicholson Committee recommended 3 for each authority producing a total of 66. We believe the actual number will be between these two figures as smaller local authorities may only require one where those with a high concentration of licensed premises may need a greater number. Depending on their finalised job description (to be drawn up by the National Licensing Forum) an LSO salary would be expected to be in the range of £15,000 - £30,000.

**COSTS ON OTHER BODIES, INDIVIDUALS & BUSINESSES**

**Police**

334. The adverse effects of alcohol cost the criminal justice system an estimated £267.9 million annually. Police responsibility will generally remain the same with responsibility for conducting checks on licence holders, enforcement and offering views on complaints. The police would have a new responsibility for conducting checks on those applying for the new personal licence. This would be an additional cost in terms of police time depending on the numbers of prospective applicants. However, those licences would remain valid for a 10 year period. In addition, checks on applications for both premises and personal licences would be specifically linked in future to whether or not relevant criminal convictions exist rather than, as at present, a check on other intelligence in order to decide whether someone is a ‘fit and proper person’. This concept is considered to be outdated and has already been abolished in England and Wales.
335. If the overall aims of the new system to assist in reducing binge drinking and under age drinking are met then the associated social consequences of antisocial behaviour, vandalism and crime might also be expected to reduce over time. Ultimately this system should help to reduce the pressure on police time caused by this behaviour which has come to blight the evening economies of towns and cities, especially at the weekend.

The National Health Service

336. Alcohol misuse attendances at A&E cost £10.5 million for the year 2002/03. This factor is one of the reasons that the Scottish Executive wishes to see a licensing system in place that can support the wider action that the Health Department is taking to deal with the consequences of misuse of alcohol. Ultimately the Executive hope that the proposed changes to licensing, particularly the Executive’s planned action to tackle irresponsible drinks promotions, will lead to a reduced cost on the NHS, however it is not possible to identify specific savings at the present time.

Business

Personal and premises licences

337. All those who presently retail alcohol, whether by on or off sales, must obtain a premises licence to allow them to continue to sell alcohol in future. In addition, the manager of the premises would be expected to hold a personal licence. One designated personal licence holder would be required but some premises may decide to employ more than one personal licence holder.

338. Personal licence holders would be required to undertake accredited training before application and refresher training every 5 years. Training will be devised in conjunction with the National Licensing Forum but will be expected to be modelled on existing training such as Servewise Plus at a cost of around £85 per person or the British Institute of Innkeeping’s Scottish Licensee Course at around £150 per person. In addition the Executive would expect Boards to charge a fee for the licence application and renewal. That fee would need to cover costs but would not be expected to be beyond the reach of small businesses or of individuals who may be covering their own training costs. In England and Wales a charge of £37 is proposed. Some Licensing Boards such as Glasgow already insist on training before issuing licences and it is of course good practice for operators to ensure that key staff are trained. Training is a fundamental part of the new system intended to raise standards and the Executive see this as an acceptable business cost which efficient businesses are already bearing.

339. At present an application for a full licence which runs for three years costs £172 and a subsequent renewal for a further period of three years costs £86. Holders of a public house or hotel licence face a further fee of £86 (which runs concurrently with their full licence) should they wish to hold a children’s certificate. Where a premises wishes to secure a regular extension to their permitted hours there is a further annual fee of £86.

340. The premises licence will take the place of the existing 7 types of liquor licence, the children’s certificate and the annual application for extension of opening hours. As outlined
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

above, the Executive expect that the premises licence will involve a one off fee on application which will be graduated and an annual ‘retention’ fee.

341. Licensing fees are currently charged by local authorities for a variety of activities. The following table shows a sample and indicates how widely costs can vary.

Table of licence fee comparison

<table>
<thead>
<tr>
<th>Type</th>
<th>Sub Type</th>
<th>Duration</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquor</td>
<td>Full licence</td>
<td>3 year</td>
<td>£172</td>
</tr>
<tr>
<td></td>
<td>New</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Renewal</td>
<td>3 year</td>
<td>£86</td>
</tr>
<tr>
<td></td>
<td>Regular extension</td>
<td>yearly</td>
<td>£86</td>
</tr>
<tr>
<td></td>
<td>Children’s certificate</td>
<td>3 year</td>
<td>£86</td>
</tr>
<tr>
<td></td>
<td>Provisional grant</td>
<td></td>
<td>£138</td>
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<tr>
<td>Betting &amp; gaming</td>
<td>Betting office licence</td>
<td>3 year</td>
<td>£125</td>
</tr>
<tr>
<td></td>
<td>Bingo licence</td>
<td>3 year</td>
<td>£3,915</td>
</tr>
<tr>
<td></td>
<td>New</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Renewal</td>
<td></td>
<td>£1,595</td>
</tr>
<tr>
<td></td>
<td>Casino</td>
<td>1 year</td>
<td>£29,640</td>
</tr>
<tr>
<td></td>
<td>New</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Renewal</td>
<td></td>
<td>£8,150</td>
</tr>
<tr>
<td>Civic</td>
<td>Sex shops</td>
<td>1 year</td>
<td>£1,000 - £5,000</td>
</tr>
<tr>
<td></td>
<td>Public entertainment (Edinburgh)</td>
<td>1 year</td>
<td>£800</td>
</tr>
<tr>
<td></td>
<td>Public entertainment (Aberdeen)</td>
<td>3 years</td>
<td>£570</td>
</tr>
<tr>
<td>Other</td>
<td>Cinema</td>
<td>1 year</td>
<td>£600</td>
</tr>
</tbody>
</table>

342. The Executive expect the cost of applying for a premises licence to be substantially increased for some businesses – this is likely to be the case for larger business enterprises. For smaller businesses such as grocers stores with a liquor licence or small licensed cafes, the increase would be smaller. The Executive expects to graduate fees on a basis which is proportionate to the size and turnover of the premises. Figures will depend on the findings of the fee review. However, the Executive are committed to discussing possible models with the licensed trade as part of that review. In addition, the Bill makes it clear that fees cannot be set without consultation with CoSLA, Licensing Boards and the licensed trade.

Staff training

343. As all permanent staff serving alcohol would require training this would entail some additional expenditure for business. Training will be discussed with the National Licensing Forum and nationally accredited. It is the Executive’s intention that employers would have 2 options:
These documents relate to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

- to send staff on a recognised accredited training course such as Servewise at a cost of £55 per person,
- to provide accredited in house training. To qualify as an accredited Servewise trainer costs £535, with an annual ongoing registration of £45 and a cost of £9 per candidate.

344. For many in the trade there would be a need to pay their staff for the time spent attending the course and they may also have to pay for someone to cover the shift. However, as training for all servers of alcohol becomes the norm, more and more staff would be going to employers having already completed their training. Exemptions will be allowed for casual staff who have worked in the trade for less than 4 months.

**Licence conditions**

345. Some businesses may face additional costs in implementing standard national licence conditions or further conditions placed on them by the Licensing Board. For example, the pool of conditions proposed for premises opening after midnight suggests that the installation of CCTV may be required for some premises. The British Entertainment and Dance Association (BEDA) estimates the average fitting cost for a nightclub CCTV system would be around £5000 per premises. However, the use of such conditions was a regular feature of the previous system. Such requirements are expected to be necessary for some premises catering for a late night market, particularly in city centres, where public safety is paramount.

346. In restricting the use of alcohol promotions to curb binge drinking, some businesses may face a change in costs related to how they market or promote themselves. They may also in some cases face a reduction in profits due to the removal of happy hours. This may apply to producers as well as retailers. The Executive are unable to quantify these costs. In addition, it would still be possible for on sales to run with lower prices provided these are maintained for a minimum of 48 hours. This would still allow, for example, lower prices to be charged mid-week when premises are traditionally quieter.

**Wholesales**

347. Wholesalers would no longer be able to sell to the public unless they obtain a personal and premises licence in line with other retailers. Previously if wholesalers sold more than 12 bottles in a single transaction, they were not obliged to obtain a licence. Wholesalers selling exclusively to the trade would continue to benefit from a licence exemption but the Executive see no reason why this should be the case if sales can be made to the public.

**Passenger ships and boats**

348. Passenger ships or boats which ply their trade between ports in Scotland or on Scotland’s lakes and waterways will be obliged to have a premises licence and to have a personal licence holder on board at all times when the vessel is serving alcohol for consumption on board. Previously such craft have been excluded from the licensing regime if they only served alcohol when the craft had left its berth. The provisions in the Bill would require the boat to have obtained a premises licence and alcohol could only be served when a personal licence holder was on board. The boat’s operators would therefore be faced with the additional costs of obtaining a premises licence and in ensuring a member of the crew held a personal licence.
Occasional licences

349. Occasional permissions enable voluntary organisations to sell alcohol at events arising from or related to the organisations’ activities. These permissions will be replaced by occasional licences under the new system. A set fee of £10 is presently required for the granting of an occasional permission. A minimum set fee will continue with the new regime.

350. Occasional licences are also available to licence holders to enable them to cater for an event taking place outwith licensed premises. A set fee of £17 is presently required. The new regime would continue with a set fee, however this would be expected to rise to cover administration costs.

Individuals

351. An individual may be faced with the cost of training to obtain a personal licence since this could be seen by many as a trade qualification ensuring eligibility for a managerial position. Obtaining a personal licence would also require the payment of an administration fee as noted above and refresher training every five years.

TIMESCALES OVER WHICH COSTS ARE EXPECTED TO ARISE

352. After the transitional period, the cost of the licensing regime would enter a set cyclical pattern which would involve, for premises licence holders, an annual retention fee. For personal licence holders this cycle would involve refresher training every five years. For local authorities there would be an ongoing administrative cost of running Licensing Boards and local Forums and employing Licensing Standards Officers. It is difficult to identify how costs would fall as this would be dependent on how many businesses choose to enter and leave the market at any particular time. However, since premises licences would be open ended there would be no 3 year cycle of licence renewals and the benefits of this should be felt by Boards following the transitional period. The maximum period envisaged for the full implementation would be three years.

353. In the longer term, the Executive hope to see benefits to communities, Licensing Boards, the police, the NHS and business of an efficiently and fairly regulated system contributing to a reduction in binge and under age drinking and the associated problems brought about by the misuse of alcohol.
SUMMARY TABLE OF COSTS

SUMMARY OF ESTIMATED ADDITIONAL COSTS TO THE SCOTTISH ADMINISTRATION

<table>
<thead>
<tr>
<th>REF</th>
<th>COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>NATIONAL LICENSING FORUM</td>
<td>£5,000 P.A.</td>
</tr>
<tr>
<td>PRODUCTION OF GUIDES TO THE NEW REGIME</td>
<td>£60,000</td>
</tr>
</tbody>
</table>

SUMMARY OF ESTIMATED ADDITIONAL COSTS TO INDIVIDUALS AND BUSINESS (ANY ADDITIONAL COSTS BORNE DIRECTLY BY LOCAL AUTHORITIES WILL BE RECOUPED THROUGH THE LICENSING FEE)

<table>
<thead>
<tr>
<th>Ref</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premises licence – application and annual retention fees</td>
<td>Subject to findings of fee review</td>
</tr>
<tr>
<td>The fees will include an element to cover the following additional costs: Training for Licensing Board members</td>
<td>£55 - £150 per Board Member</td>
</tr>
<tr>
<td>Licensing Standards Officers</td>
<td>£15,000 - £30,000 p.a. for each LSO</td>
</tr>
<tr>
<td>Personal licence – training</td>
<td>£85 - £150. Refresher training would be required every 5 years.</td>
</tr>
<tr>
<td>Personal licence – application and renewal fees</td>
<td>Subject to findings of fee review</td>
</tr>
<tr>
<td>Staff training</td>
<td>£55 per person.</td>
</tr>
</tbody>
</table>
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

354. On 28 February 2005, the Minister for Finance and Public Service Reform (Mr Tom McCabe) made the following statement:

“In my view, the provisions of the Licensing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

355. On 24 February 2005 the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Licensing (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
LICENSING (SCOTLAND) BILL

INTRODUCTION

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

BACKGROUND

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

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

Policy objectives of the bill

Overview

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

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5. There are four key issues that underline the approach the Executive has taken in proposing the new licensing system for Scotland. They are: reducing underage drinking, reducing binge drinking, providing a voice for communities, and modernisation.

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

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

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

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

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

Binge drinking

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

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

Crime associated with binge drinking and alcohol misuse

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Main crime or offence</th>
<th>Total</th>
<th>Number</th>
<th>Number attributable to alcohol</th>
<th>Average number of days served</th>
<th>Number</th>
<th>Number attributable to alcohol</th>
<th>Average number of days served</th>
<th>Number</th>
<th>Number attributable to alcohol</th>
<th>Average number of days served</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Up to 4 years</td>
<td></td>
<td></td>
<td>4 years and over</td>
<td></td>
<td>Life</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Number</td>
<td>Number</td>
<td>Average</td>
<td>Number</td>
<td>Number</td>
<td>Average</td>
<td>Number</td>
<td>Number</td>
<td>Average</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total</td>
<td>Number</td>
<td>number</td>
<td>of days</td>
<td>Number</td>
<td>number</td>
<td>of days</td>
<td>Number</td>
<td>number</td>
</tr>
<tr>
<td>Non sexual violent crime</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homicide</td>
<td>74</td>
<td>15</td>
<td>4</td>
<td>645</td>
<td>30</td>
<td>8</td>
<td>2594</td>
<td>29</td>
<td>7</td>
<td>5202</td>
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<tr>
<td>Serious assault</td>
<td>540</td>
<td>455</td>
<td>114</td>
<td>486</td>
<td>85</td>
<td>21</td>
<td>2229</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Robbery</td>
<td>433</td>
<td>339</td>
<td>85</td>
<td>473</td>
<td>94</td>
<td>24</td>
<td>2056</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other violence</td>
<td>22</td>
<td>19</td>
<td>5</td>
<td>325</td>
<td>3</td>
<td>1</td>
<td>3166</td>
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<td>-</td>
<td>-</td>
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<tr>
<td>Crimes of indecency</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Sexual assault</td>
<td>64</td>
<td>24</td>
<td>6</td>
<td>593</td>
<td>38</td>
<td>10</td>
<td>2598</td>
<td>2</td>
<td>1</td>
<td>5202</td>
</tr>
<tr>
<td>Lewd &amp; indecent behaviour</td>
<td>103</td>
<td>85</td>
<td>21</td>
<td>499</td>
<td>18</td>
<td>5</td>
<td>2283</td>
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<tr>
<td>Other indecency</td>
<td>28</td>
<td>15</td>
<td>4</td>
<td>590</td>
<td>13</td>
<td>3</td>
<td>2796</td>
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<tr>
<td>Crimes of dishonesty</td>
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<td></td>
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<td></td>
<td></td>
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<tr>
<td>Housebreaking</td>
<td>1377</td>
<td>1374</td>
<td>344</td>
<td>204</td>
<td>3</td>
<td>1</td>
<td>2131</td>
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<tr>
<td>Theft by opening lockfast places</td>
<td>611</td>
<td>611</td>
<td>153</td>
<td>141</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<td>-</td>
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<tr>
<td>Theft of motor vehicle</td>
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<td>370</td>
<td>93</td>
<td>137</td>
<td>1</td>
<td>0</td>
<td>1826</td>
<td>0</td>
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<td>-</td>
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<tr>
<td>Shoplifting</td>
<td>2382</td>
<td>2382</td>
<td>596</td>
<td>100</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other theft</td>
<td>1232</td>
<td>1231</td>
<td>308</td>
<td>124</td>
<td>1</td>
<td>0</td>
<td>2006</td>
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<tr>
<td>Fraud</td>
<td>173</td>
<td>173</td>
<td>0</td>
<td>168</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Other dishonesty</td>
<td>514</td>
<td>512</td>
<td>128</td>
<td>120</td>
<td>2</td>
<td>1</td>
<td>1734</td>
<td>0</td>
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</tr>
<tr>
<td>Fire raising, vandalism, etc.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire raising</td>
<td>33</td>
<td>31</td>
<td>8</td>
<td>499</td>
<td>2</td>
<td>1</td>
<td>1734</td>
<td>0</td>
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<td>-</td>
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<td>Vandalism, etc.</td>
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<td>263</td>
<td>66</td>
<td>87</td>
<td>3</td>
<td>1</td>
<td>2070</td>
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<td>Other crime</td>
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<tr>
<td>Crime against public justice</td>
<td>989</td>
<td>986</td>
<td>247</td>
<td>68</td>
<td>3</td>
<td>1</td>
<td>1582</td>
<td>0</td>
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<td>-</td>
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<td>Handling offensive weapons</td>
<td>650</td>
<td>650</td>
<td>163</td>
<td>120</td>
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<td>0</td>
<td>0</td>
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<td>-</td>
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<tr>
<td>Drugs</td>
<td>896</td>
<td>765</td>
<td>191</td>
<td>338</td>
<td>131</td>
<td>33</td>
<td>1966</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
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<td>481</td>
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<tr>
<td>Motor Vehicle Offences</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Dangerous &amp; careless driving</td>
<td>148</td>
<td>148</td>
<td>-</td>
<td>243</td>
<td>0</td>
<td>-</td>
<td>0</td>
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<td>Drink driving</td>
<td>171</td>
<td>171</td>
<td>171</td>
<td>117</td>
<td>0</td>
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<td>0</td>
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<td>Speeding</td>
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<td>0</td>
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<td>-</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
<td>Unlawful use of vehicle</td>
<td>1043</td>
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<td>-</td>
<td>172</td>
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<td>-</td>
<td>0</td>
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<td>Vehicle defect offences</td>
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<td>91</td>
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<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
<td>4</td>
<td>-</td>
<td>49</td>
<td>0</td>
<td>-</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Miscellaneous offences</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simple assault</td>
<td>1413</td>
<td>1413</td>
<td>353</td>
<td>147</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Breach of the peace</td>
<td>1140</td>
<td>1139</td>
<td>285</td>
<td>83</td>
<td>1</td>
<td>0</td>
<td>1461</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Drunkenness</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other miscellaneous</td>
<td>1788</td>
<td>1786</td>
<td>447</td>
<td>92</td>
<td>2</td>
<td>1</td>
<td>2374</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>16476</td>
<td>16015</td>
<td>3797</td>
<td>430</td>
<td>111</td>
<td>31</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

Under-age drinking

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

17. What is of particular concern, however, is the growing amount of evidence that children, sometimes as young as 12 or 13, are drinking regularly in an unsupervised fashion, and often to excess. On Ministers’ behalf, the Scottish Executive Central Research Unit commissioned research which was undertaken within the context of the Edinburgh Study of Youth Transitions and Crime. That is a large-scale, longitudinal study of approximately 4,300 young people.
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

currently aged around 15 and attending schools within Edinburgh. Although the study is confined to young people in Edinburgh, there is no reason to suppose that its findings are not equally valid throughout Scotland as a whole. The major findings of the study are as follows:

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

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

Irresponsible promotions

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

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

Communities

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

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

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

Modernisation

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

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

Action so far

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

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

Consultation and development of the Bill

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

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

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

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

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

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

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

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

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

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

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

THE BILL

THE NATIONAL POLICY FRAMEWORK

Policy objectives

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

Licensing Boards

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

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

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

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

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

**Board constitution**

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

**Licensing policy statements**

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

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

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

**Overprovision**

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

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

**Local Licensing Forums**

49. Another key local element of the new system is that it should provide an effective mechanism for members of local communities to make formal and informal views known to the
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

Licensing Board. This is achieved by the requirement that for each local authority area a Local Licensing Forum must be established. The Forums would be governed and appointed by local authorities. The Bill provides that local authorities must seek to ensure that so far as possible the membership of these Forums should be representative of persons or descriptions of persons who have an interest which is relevant to the Forum’s general functions. Those would be:

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

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

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

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

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

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

Guidance

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

56. In addition, Ministers may decide to develop specific guidance for local Licensing Forums to help them to understand their role and fulfil their remit. The Bill makes suitable provision for this.
National Licensing Forum

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

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

Consultation

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

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

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

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

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

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

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

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

Alternative approaches

Licensing Boards

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

National Licensing Forum

68. Two different options were considered.

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

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

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

**LICENCES**

**Policy objectives**

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

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

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

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

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

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

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

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

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

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

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

**The premises licence**

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

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

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

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

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

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

Variations

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

Transfers

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

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

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

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

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

Standard national licence conditions

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

86. In addition Licensing Boards would be able to choose from a range of additional discretionary standard national licence conditions that would be applicable to premises licences according to the activities that would be undertaken on the premises. In summary, those other
standard national licence conditions currently proposed for regulations would cover the following areas:

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

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

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

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

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

**Members clubs**

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

**The personal licence**

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

Occasional licences

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

Consultation

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

Alternative approaches

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

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

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

**Licensing Hours**

**Policy objectives**

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

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

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

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

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

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

Consultation

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

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

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

Policy objectives

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

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

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

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

Consultation

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

MONITORING AND COMPLIANCE

Policy objectives

Licensing Standards Officers (LSOs)

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

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

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

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

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

The premises licence

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

113. Following an oral hearing the following range of sanctions could be applied by the Licensing Board:

- issue a written warning to the licence holder where there has been a breach of a licensing condition;
- make a variation to the premises licence;
- suspend the premises licence for a period as the Board may determine; or
- revoke the premises licence.

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

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

The personal licence

116. Licensing Boards’ more pro-active role would include having the means of ensuring that personal licence holders, and in particular those designated as being in charge of operations in particular premises, are carrying out their duties in a responsible and acceptable manner. Personal licence holders would be under a duty to notify their Licensing Board of any convictions for a relevant or foreign offence for the purposes of this Bill. The courts would also be under a similar obligation to notify Licensing Boards should a personal licence holder be convicted of a relevant offence in Scotland. Should a personal licence holder be convicted of a relevant offence, the Licensing Board would hold a hearing in order to determine whether the personal licence should continue in force. Should the Licensing Board consider it necessary for the promotion of the licensing objectives it would be able to make an order that would:

- revoke the licence;
- suspend the licence for a period not exceeding six months; or
- endorse the licence.
117. Where a personal licence holder has not been charged or convicted of any offence but is found by the Licensing Board to have failed to carry out his or her duties in an acceptable manner consistent with the licensing objectives, the Board would hold a hearing. Should the Licensing Board consider it necessary for the promotion of the licensing objectives it would, as in the previous circumstances, be able to make an order that would:

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

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

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

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

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

**Police powers and closure orders**

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

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

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

A senior police officer may, if the officer reasonably believes that—

(a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,

(b) closure of the premises is necessary in the interests of public safety, and

(c) the risk to public safety is such that it is necessary to do so immediately and without making an application to the relevant Licensing Board,

make a closure order in relation to the premises.

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

Exclusion orders

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

(a) the licensed premises concerned, and

(b) such other licensed premises (if any) as the court may specify in the order, except with the appropriate consent.

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

**Consultation**

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

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

**Alternative approaches**

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

**IRRESPONSIBLE PROMOTIONS**

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

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

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

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

- **Licence conditions to suit specific circumstances** – power for Boards to modify licensees operating plan, determine the suitable opening hours and apply a wide range of conditions to a licence;
- **Fewer licences in areas which have reached saturation point** – Boards to conduct new overprovision assessments and block licences where there is considered to be saturation (in accordance with guidance from National Forum);
- **Tough enforcement** – where premises is a focus for disorder a range of sanctions can be applied from modifying any licence condition including opening hours to suspension or revocation of the licence; and
- **It would continue to be an offence to serve someone who is drunk** – but supplemented with this becoming a “relevant offence” for the purposes of the new scheme. Relevant offences are those offences which will be set out in regulations and would result in the initiation of a licence review and may lead to the application of sanctions.

**Consultation**

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

Alternative approaches

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

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

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

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

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

UNDER-AGE DRINKING: CHILDREN AND YOUNG PEOPLE

Policy objectives

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

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

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

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

Consultation

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

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

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

TRAINING

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

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

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

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

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

Staff serving alcohol

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

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

Consultation

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

FEES

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

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

148. The Bill, therefore, provides the Scottish Ministers with a power to make regulations that would set out those matters relating to licence fees. A Licensing Board should be able to refuse to process an application unless it is accompanied by a fee which the Scottish Ministers have set
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

and a Board should be entitled to recover any fees owed. Ministers would be placed under a specific duty to consult with the relevant bodies before implementing a fee increase. We are conducting a full fee review to ensure that fees can be set at a suitable level to fund the new system and ensure full cost recovery. Results of this review would be made available to the Parliament in due course.

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

Consultation

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

Alternative approaches

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

APPEALS

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

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

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

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

Consultation

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

Alternative approaches

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

TRANSITIONAL ARRANGEMENTS

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

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

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

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

Equal opportunities

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

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

Human rights

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

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

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

**Island communities**

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

**Local government**

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

168. The Scottish Executive is committed to sustainable development. Ministers published a paper\(^9\) in April 2002. This paper made clear that environmental and social justice are central to Ministers’ views of sustainable development. This Bill includes proposals that support social justice and the interests of local communities. The Bill provides for better engagement with communities in the granting of liquor licences and also introduces enforcement powers for Licensing Boards and the police to tackle areas of related antisocial behaviour. These measures would contribute to safer and more sustainable communities by addressing the kinds of problems that can degrade the surrounding environment, potentially undermine the local economy and lead local communities to feel excluded from shared public spaces.

\(^{9}\) Meeting the Needs: Priorities, Actions and Targets for Sustainable Development in Scotland
ANNEX

Meetings held by Scottish Executive officials:

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

Meetings between Ministers, SE and Trade:

Licensee of Moskito Bar, Glasgow & Scottish Licensed Trade Association – 9/7/04
Proprietor of Parkstone Hotel, Prestwick/Scottish Licensed Trade Association/British Entertainment and Dance Association/ British Beer and Pub Association/Scottish Grocers’ Federation and Scottish Retail Consortium – 9/8/04
Belhaven Brewery – 24/08/04
SLTA Dinner – 26/10/04
Paul Smith, Castle Leisure Group and Sportsters Bar, Edinburgh – 5/11/04
Scottish Licensed Trade Association – 5/11/04
This document relates to the Licensing (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 28 February 2005

Visit to Molly Malone’s Pub, Glasgow – 2/12/04
British Entertainment and Dance Association – 16/12/04
Scottish Retail Consortium - 21/12/04
Scottish Grocers Federation – 21/12/04
Scottish Beer and Pub Association – 30/10/04, 11/1/05 & 18/1/05
Alcohol producers, Diageo, Coors, Tennents Caledonian, Scottish Brewers, Belhaven, Anheuser-Busch, and Allied Domecq – 2/2/05

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

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

Seminars:
Alcohol Focus Scotland – 19/9/04

Dates of meetings of SE Expert Group:
1/6/04, 21/6/04, 29/6/04, 5/7/04, 9/7/04, 14/7/04, 28/7/04, 16/8/04, 1/12/04 and 7/2/05.
Local Government and Transport Committee

7th Report, 2005 (Session 2)

Stage 1 Report on the Licensing (Scotland) Bill

Volume 1
VOLUME 1

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

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

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Councillor Duncan MacIntyre, Chair, Lorn Mid-Argyll, Kintyre and Islay Divisional Licensing Board;
Councillor Rory Colville, Vice-Chair, Lorn 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 subdivision, SOLAR; and
Councillor Jim Swan, Chair of the Licensing Bill Team, COSLA; and
Kathy Cameron, Policy Manager, COSLA

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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
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 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
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.3 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, 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, 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 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.’

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 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 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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6 *Report of the Working Group on Off-Sales in the Community*, Scottish Executive, 2004
http://www.scotland.gov.uk/library5/society/osc-00.asp

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.

\[10\] 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
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.\(^\text{11}\)

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

\(^{11}\) 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.14

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.’15

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—

‘We 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.’16

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

14 OR Col 2221
15 OR Col 2191
16 OR Col 2361
Local Government and Transport Committee, 7th Report, 2005 (Session 2)

membership that is an appropriate percentage of the total number of Councillors for the city.\(^{17}\)

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.’\(^{18}\)

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.’\(^{19}\)

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

\(^{17}\) City of Glasgow Licensing Board written submission
\(^{18}\) Dundee City Licensing Board written submission
\(^{19}\) 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

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22 OR Col 2261
23 Mitchell 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—

\begin{quote}
\textquote{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}
\end{quote}

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—

\begin{quote}
\textquote{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}
\end{quote}

*Role and accountability*

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

\begin{flushright}
\textsuperscript{24} City of Glasgow Licensing Board written submission  
\textsuperscript{25} OR Col 2562  
\textsuperscript{26} Policy Memorandum, page 25
\end{flushright}
Local Government and Transport Committee, 7th Report, 2005 (Session 2)

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.’

Independence 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—

27 OR Col 2590
28 OR Col 2200
29 OR Col 2657
30 The Law Society of Scotland, written submission
‘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.\textsuperscript{34}

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.’\textsuperscript{35}

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 […]’\textsuperscript{36}

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.

\textsuperscript{34} OR Col 2250
\textsuperscript{35} OR Col 2369
\textsuperscript{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.
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

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.

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." \(^{37}\)

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.

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—

39 OR Col 2417
40 OR Col 2269
41 OR Col 2419
42 OR Col 2588
'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.'

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

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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—
‘[…] 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.’

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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

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.’\(^51\)

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.’\(^52\)

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.’\(^53\)

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

\(^{51}\) City of Glasgow Licensing Board, written submission

\(^{52}\) South Ayrshire Licensing Board, written submission

\(^{53}\) 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.’54

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 kept three different types of licence for three entirely different disciplines. Running a nightclub is entirely different from running a pub or an off-sales.

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.

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.'

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.'

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
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.'

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.'

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’. 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.’62

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.

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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 of 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.

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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.’65

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.’66

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.’67

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 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.’\(^69\)

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

\(^{68}\) 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.’70

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.’71

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.’72

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—

70 Paragraph 104
71 Col 2206
72 Col 2268
‘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.’73

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.’74

255. Robert Millar, Clerk to the Edinburgh City Council backed the proposal 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.’75

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—

76 Col 2585
Local Government and Transport Committee, 7th Report, 2005 (Session 2)

‘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.\footnote{Col 2590}

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.\footnote{Col 2590}

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
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.’\textsuperscript{87}

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—

\[\text{89 Col 2347}\]
‘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
that needs properly to be addressed. If the committee makes a recommendation on that, we will be happy to consider it.\footnote{Col 2597}

298. 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.

299. 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

300. 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.’\footnote{Section 60}

301. 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.

302. 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.\textsuperscript{98}

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.’\textsuperscript{99}

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.’\textsuperscript{100}

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.’\textsuperscript{101}

\textsuperscript{98} Sheriff Principal Gordon Nicholson, written submission
\textsuperscript{99} Col 2259
\textsuperscript{100} Col 2479
\textsuperscript{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.103

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.’104

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.’105

‘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.’

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.107

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

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
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. \textit{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. \textit{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

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113 Col 2279
114 Col 2291
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.'

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.’

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

\[\textit{\footnotesize\textsuperscript{117 Col 2603}}\]

\[\textit{\footnotesize\textsuperscript{118 Policy Memorandum, p36}}\]
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.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.'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.'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

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119 Policy Memorandum, p37
120 OR Col 2272
121 OR Col 2357

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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.

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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.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.'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

128 OR Col 2603
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.’\footnote{141} South Ayrshire Council was also concerned over the lack of definition of ‘capacity.’\footnote{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. [...]’\footnote{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.’\footnote{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.’\footnote{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

\footnote{141} Law Society of Scotland Licensing Law sub-committee, written submission to Local Government and Transport Committee
\footnote{142} South Ayrshire Licensing Board, written submission to Local Government and Transport Committee
\footnote{143} Glasgow City Council, written submission to Local Government and Transport Committee
\footnote{144} Scotch Whisky Association, written submission to Local Government and Transport Committee
\footnote{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

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.’\(^{147}\)

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.[…]\(^{148}\)

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.’\(^{149}\)

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

\(^{147}\) OR Col 2306

\(^{148}\) OR Col 2458

\(^{149}\) OR Col 2439
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. 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. […]’\(^{155}\)

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.’\(^{156}\)

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

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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.’\textsuperscript{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.’\textsuperscript{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

\textsuperscript{161} OR Col 2581
\textsuperscript{162} 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.

163 OR Col 2198
164 OR Col 2569
165 Scottish Executive News Release
http://www.scotland.gov.uk/News/Releases/2005/02/24160306
SUBORDINATE LEGISLATION COMMITTEE REPORT

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 2 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.

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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. \textbf{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.}

\textit{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”.\footnote{Law Society of Scotland, written evidence}  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”.\footnote{Official Report, 22 March 2005, column 1460}

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

\textit{Parts Three – Six of the Bill – Premises Licences, Occasional Licences, Licensed Hours and Personal Licences}

\textit{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”.\footnote{Scottish Retail Consortium, written evidence}

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.\footnote{Policy Memorandum, paragraph 86} 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.

\footnote{Law Society of Scotland, written evidence} \footnote{Official Report, 22 March 2005, column 1460} \footnote{Scottish Retail Consortium, written evidence} \footnote{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”. 11 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.

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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”.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.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.

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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 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”; and

  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”.

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

Secondary Legislation

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

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

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

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

Outline and scope of the Bill

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

Part 1 Core provisions

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

Part 2 Licensing bodies and officers

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

Part 3 Premises licences

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

Part 4 Occasional licenses

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

Part 5 Licensed hours

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

Part 6 Personal licences

Part 6 introduces the new personal licence established by this Bill and sets out the framework for the grant or refusal of applications for these licences. It also provides for circumstances under which personal licences can be revoked and a requirement for mandatory training for personal licence holders.
Part 7  Control of order

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

Part 8  Offences

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

Part 9  Miscellaneous and General

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

Delegated powers

Choice of procedure

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

PART 2 LICENSING BODIES & OFFICERS

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

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

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

Reasons for taking this power

The purpose of the ‘licensing policy statement’ is to offer guidance and clarity on the policy upon which Licensing Boards are to base their decisions in carrying out their functions under the Bill. This is particularly important for a system in which, in order to allow for a high degree of local flexibility, Licensing Boards are given discretion. The proposed power would enable the Scottish Ministers to set the date when the first such policies should be in place. No firm date for the publication of the ‘licensing policy statement’ has currently been decided due to the need to discuss and consider in detail with Boards and the licensed trade the timescales during which the transitional period should take place.
Section 9(2) Licensing Board’s Duty to keep a public register
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

Section 13(4) Licensing Standards Officers
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

PART 3 PREMISES LICENCES

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

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

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

Reasons for taking this power

The details are likely to be intricate and will require further consultation, so it is considered more appropriate for these to be set out in regulations.
Section 19(4) Application for premises licence

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

Section 19(4) confers a power on the Scottish Ministers to make regulations prescribing the form of operating plans and the information they would be required to contain in addition to that listed in subsection (4)(a)-(d). This includes information about the individual who is to be the premises manager, the activities to be carried on in the premises, the times alcohol is to be sold and whether the alcohol is for consumption on the premises, off the premises or both.

Reasons for taking this power

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

Section 20(6) Notification of applications

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

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

Reasons for taking this power

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

Section 21(2)(a) Objections and representations

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

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

Reasons for taking this power

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

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

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

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

Reasons for taking this power

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

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

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

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

Reasons for taking this power

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

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

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

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

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

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

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

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

The purpose of section 25(3) is to enable Ministers to prescribe discretionary conditions which Boards may draw on as required within their locality. This allows Ministers to prescribe a ‘pool’ of conditions that Boards must have regard to. This power would allow us to prescribe and modify conditions that become desirable over time once the new system has bedded in or on advice from the National Licensing Forum. It is very likely, as new practices develop within the trade or as new public order issues arise, that we may need to add additional licence conditions.

The use of a pool approach, especially when looking at the demands of a busy city centre premises compared to a rural premises was supported by the Expert Reference Group when considering suitable licence conditions for ‘late opening premises’ which supply on-sales. The draft conditions proposed are attached at Annex B. These have been endorsed by Ministers and we therefore intend to include these conditions in regulations using this power.

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

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

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

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

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

Reasons for taking this power

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

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

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

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

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

**Reasons for taking this power**

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

**Section 52(c) Certified copies**

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

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

**Reasons for taking this power**

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

**PART 4 OCCASIONAL LICENCES**

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

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

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

**Reasons for taking this power**

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

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

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

Section 55(2)(a) confers on the Scottish Ministers a power to prescribe the manner and timescale within which Licensing Boards would be required to forward to an occasional licence applicant any objection or representation the Board has received in relation to that application.

**Reasons for taking this power**

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

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

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

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

**Reasons for taking this power**

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

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

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

**PART 6 PERSONAL LICENCES**

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

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

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

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

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

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

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

*Reasons for taking this power*

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

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

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

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

*Reasons for taking this power*

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

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

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

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

*Reasons for taking this power*

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

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

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

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

Reasons for taking this power

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

Section 91 Regulations as to closure orders
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

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

Reasons for taking this power

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

PART 8 OFFENCES

Section 93(4)(c) Sale of alcohol to a child or young person
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

Section 101(3) Duty to display notice
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

PART 9 MISCELLANEOUS AND GENERAL

Section 115(3)(b) Excluded Premises
Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

Section 115(5) Excluded premises
Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

Section 116(1)(a) and (b) Exempt premises
Power conferred on: The Scottish Ministers
Powers exercised by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Section 116(1)(a) and (b) confers a power on the Scottish Ministers to make an order listing which airports, ports or hover ports are exempt from the requirement to hold a licence under the Bill. Only the “examination station” or “approved wharf” at the airport, port or hoverport would be exempt. These are the areas beyond the security controls.
Reasons for taking this power

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

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

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

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

Reasons for taking this power

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

- the club must be non-profit making and not open to the public;
- the club must have a written constitution and rules;
- the business and affairs of the club must be under the management of a committee or governing body which is elected by the general body of members (and this must be reflected in the constitution and rules);
- the rules must state that no person under 18 shall be admitted a member of the club unless the club is one which is devoted primarily to some athletic or sporting purpose or is a students’ union;
- the rules must state that no member of the committee or governing body and no manager or servant employed in the club shall have any interest in the sale of alcohol;
- the rules must state that a visitor may not be admitted to the club except on the invitation and in the company of a member of the club and that where a visitor is supplied with alcohol the member must enter his own name and the name and address of the visitor in a book which shall be kept for that purpose and which shall show the date of each visit;
- the rules must state that correct accounts and books shall be kept showing the financial affairs of the club;
- the rules must state that, in order for the club to be properly constituted, it must have at least 25 members.

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

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

Section 120(1) Relevant offences and foreign offences
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

Section 123(8) Appeals: supplementary provision
Power conferred on: The Court of Session
Powers exercised by: Act of Sederunt
Parliamentary procedure: None

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

Reasons for taking this power

It is considered appropriate to allow the courts to regulate their own procedure by Act of Sederunt.

Section 124(2) and (3)(a) Hearings
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

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

Reasons for taking this power

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

Section 125(1) Form etc. of application and notices
Power conferred on: The Scottish Ministers
Powers exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament
Section 125(1) confers on the Scottish Ministers a power to make regulations that set out the form, content, requirement to publicise or notice to be given of any application or notices made under the Bill.

Reasons for taking this power

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

This power will, amongst other things, allow us to prescribe the detail of how applications should be advertised. It is our intention that applications should be well publicised e.g. to local residents and anyone with an interest. This will be done, as at present, by newspaper advertisements, until Licensing Board websites have been established. Once websites have been established there will be no further need for newspaper adverts, which are seen by Boards themselves as being expensive and ineffective. In addition, however, it is our intention that an A3 pro-forma notice would be displayed by the applicant outside the premises in question. The form of the notice would take into account advice from the National Licensing Forum. We would expect it to contain the following information:

- Licence applicant’s name;
- Name and address of premises;
- Proposed hours of operation on each day of the week;
- Brief overview of the nature of business to be conducted at the premises (drawn from draft operating plan);
- Specific arrangements for children;
- Information about how to make an objection or representation.

Section 127(1) Fees

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

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

Reasons for taking this power

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

Section 130(3) Remote sales of alcohol

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

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

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

Section 135 Ancillary provision

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

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

Reasons for taking this power

This provision allows suitable flexibility to deal with any minor problems that may arise.

Section 140(2) Short title and commencement

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

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

Reasons for taking this power

This order making power is required to ensure effective commencement of the Bill.

SCHEDULE 1 LICENSING BOARDS

Schedule 1, paragraph 11(1) Training of members

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

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

Reasons for taking this power

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

We intend to set out mandatory requirements for Board member training. This can take the form either of specifying the minimum content of that training or accrediting particular courses and adding to this over time. This has to be done on a national basis.
Schedule 1, paragraph 12(4) Proceedings

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

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

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

Reasons for taking this power

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

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

Schedule 1, paragraph 12(5) Proceedings

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

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

Reasons for taking this power

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

SCHEDULE 3 PREMISES LICENCES: MANDATORY CONDITIONS

Schedule 3, paragraph 6(1) Training of staff

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

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

Reasons for taking this power

It is considered that the accreditation of training is too detailed to be contained on the face of the Bill. We also wish to consult further on the subject of training and, in particular, will seek advice from the National Licensing Forum.
We intend to set out mandatory requirements for the training of all permanent members of staff serving alcohol on licensed premises. This can take the form either of specifying the minimum content of that training or accrediting particular courses and adding to this over time. This has to be done on a national basis.

We intend to provide different requirements for casual staff and for staff working in seaman’s canteens, who are largely volunteers. This is expected to be in-house basic instruction given by the designated personal licence holder. We intend to provide that ‘casual staff’ would be considered to be those staff working in the trade in any post for a total of 4 months or less i.e. 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.
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” (eg plastic) required to be used throughout trading hours.
- **Toilet supervisors**: toilet supervisors should be provided.
- **Drugs policy**: a drugs policy should be implemented.
- **Curfews**: a curfew may be imposed on entrance (i.e. by a time agreed by the Board).

OFF-SALES

**Display areas**: the provision of separate display areas for alcohol for those premises where that would be appropriate.
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.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

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

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)  
Mr David Davidson (Committee Substitute)  
Michael McMahon  
Margaret Smith  
Bruce Crawford JP (Deputy Convener)  
Paul Martin  
Bristow Muldoon (Convener)

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.
Local Government and Transport Committee

7th Report, 2005 (Session 2)

Licensing (Scotland) Bill

Volume 2
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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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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); and
Keith Robson, Director, National Union of Students (Scotland)

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Councillor Duncan MacIntyre, Chair, Lorn Mid-Argyll, Kintyre and Islay Divisional Licensing Board;
Councillor Rory Colville, Vice-Chair, Lorn 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; and
Councillor Jim Swan, Chair of the Licensing Bill Team, COSLA; and
Kathy Cameron, Policy Manager, COSLA

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Jack Law, Chief Executive, Alcohol Focus Scotland;
Mary Ellmers, National ServeWise Manager, Alcohol Focus Scotland;
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Willie Caie, Project Manager, Safer City Centre Initiative; and
Neil Ross, Former Chairman, Moray Council on Addiction

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Licensing (Scotland) Bill: Stage 1

14:16

The Convener: That brings us to the main item on today’s agenda: consideration of the Licensing (Scotland) Bill at stage 1. I welcome to the committee four representatives of the Scottish Executive: Rab Fleming is head of the local governance and licensing division; Jacqueline Conlan is the bill team leader; Ian Fairweather is also in the bill team; and John St Clair is from the office of the solicitor to the Scottish Executive. Welcome to you all. We look forward to the evidence that you will be leading this afternoon. We will start by hearing an opening statement on the general principles of the bill.

Rab Fleming (Scottish Executive Finance and Central Services Department): Good afternoon and thank you for the invitation to give evidence on the Licensing (Scotland) Bill. The bill has been a long time coming. The Nicholson committee reported almost four years ago and, since then, we have held extensive consultations with the licensed trade and many public and voluntary bodies. Following that consultation, we believe that we have been able to put together a coherent and robust bill.

There are still some areas that need further work. One is the transition from the old system to the proposed new system; another is the potential need for controls of off-sales promotions. Nevertheless, we believe that now is a good time to introduce the bill.

I will say something about the recent history of the bill team. Over the past seven to eight months, the bill team has been transferred from the Justice Department to the Finance and Central Services Department and has been relocated from St Andrew’s House to Victoria Quay. Within the past couple of months, it has been transferred to a brand-new division within the Finance and Central Services Department. Although the bill team has had a relatively rough passage over the past few months, I hope that that has not been the case for the bill itself.

The Convener: Thank you for those opening remarks, Mr Fleming. I invite questions from members, starting with the deputy convener, Bruce Crawford.

Bruce Crawford (Mid Scotland and Fife) (SNP): Thank you for coming along and helping us out on the bill, for which I am very grateful. I would first like to consider the abolition of permitted opening hours and the ending of the requirement to have licences renewed every three years. I think that there is a correlation between those two issues, which we need to explore.
The information that I have from the trade and licensing boards indicates there is already a variety of practice in how licensing boards go about their work. That is not necessarily a bad thing: it means that licensing boards are reflecting what their local communities are looking for.

On permitted opening hours, what thoughts were given to the potential dangers of moving from what is effectively a core set of permitted hours, which everybody understands, to a situation in which the different licensing boards will effectively have the capacity to come up with 32 proposals for different parts of Scotland, involving when premises open and how they operate, without any cognisance being taken of a core time? In effect, it will be for licensing boards to determine such matters.

Is there a danger that, unless there is strong guidance from the Executive, there will be no strategic overview of how boards operate, so that we end up with a patchwork approach to licensing in Scotland? I do not suggest for a moment that this might happen, but, for example, the Western Isles licensing board might decide not to allow pubs, clubs or hotels to open on a Sunday—or a Saturday. Edinburgh might decide to take a much more liberal approach to opening hours than Fife, which might have a more regressive attitude. The different approaches might cause a considerable shift of people.

I hope that I am giving a flavour of my thinking. Perhaps the answer will come through further material and guidance for licensing boards, but we need to know whether that will happen. I will allow the witnesses to reflect on and answer those concerns before I make a second point.

Jacqueline Conlan (Scottish Executive Finance and Central Services Department): It might be helpful if I provide a little background to the recommendation for the removal of statutory permitted opening hours. Sheriff Principal Nicholson took the view that, although the current system provides for statutory permitted opening hours, there is a fairly entrenched system of regular extensions, which is operated by licensing boards across the country in a variety of ways. There is already a patchwork approach. Indeed, 10,000 of the existing 17,000 licences benefit from extensions to opening hours, so there is much local differentiation in the current system.

Sheriff Principal Nicholson and his committee took the view that there was a need to reform the system to ensure that there was some certainty up front about the hours that establishments would open and that the system would work in the way in which it was intended to work. When the Licensing (Scotland) Act 1976 was enacted, it was not intended that regular extensions would be granted. The new system will remove statutory permitted opening hours, but applicants will be required specifically to set out in their operating plans the opening hours that they want their premises to have. That is one part of the system, but licensing boards will also give a general steer on opening hours in their licensing policy statements, which they will draw up with regard to the licensing principles, by which I mean the five key licensing objectives that the bill sets out.

There will be some differentiation, but we are trying to strike a balance between the benefits of national consistency and the benefits of local flexibility. It was clear that licensing boards wanted local flexibility. The Executive will provide guidance on how boards should use that flexibility, but it intends boards to have a much better tool for controlling licensed premises and allowing them to open in a way that suits the requirements of the area.

Bruce Crawford: I understand that and I appreciate the background to the approach. However, a member of the Scottish Licensed Trade Association who is watching the process unfold might understandably be concerned that in some areas the core hours that are currently permitted might be eaten into, because licensing boards might take a much less liberal approach than is intended. How will the Executive deal with such situations? Currently, the trade has a guarantee that it can open during certain hours, but no such guarantee will exist in future. Those concerns have been expressed to me, although not necessarily in those terms.

If operators are to be granted a single premises licence, what will the Executive do about nightclubs that apply to their local licensing board to open during what are currently the core permitted hours for ordinary pubs? Nightclubs usually open from eight o'clock at night, but they might decide to open up for larger parts of the day.

Jacqueline Conlan: The point that you make was raised by the SLTA. One important aspect is that the policy statement, which we have tied specifically to the operation of the licensing principles, will provide some certainty up front. In general, under the new system, boards will not be able to take decisions on a whim and there will be many more checks and balances on their powers. That approach is underpinned by provisions in the bill such as the national framework and by the guidance that the Executive will issue. If boards do not adhere to that guidance, they will have to give their reasons for not doing so.

As for the differentiation between nightclubs and pubs, we decided to move to a single premises licence because such a differentiation was no longer appropriate in a modern system. After all, a lot of those barriers have been broken down. As you pointed out, nightclubs now open during the
day and the number of hybrid premises is on the rise. The current system simply cannot cope with such developments.

Under the proposed legislation, when boards take decisions on opening hours, they will have to have regard to what is appropriate for those premises. In the bill, we take the view that in this new world the appropriate approach is not to set up some artificial distinction between a pub and a nightclub. Instead of considering potentially artificial barriers between types of licensed premises, we have tended to look more at the whole later-opening section of the market and to think about what might happen after, say, midnight and how we can regulate on the issues that might arise at that time.

**Bruce Crawford:** I hear what you say, but I think that I will need a wee bit of convincing on that matter. However, I will listen to the evidence that we receive.

My second question is about the fact that, under the bill, there will no longer be a requirement for a three-year renewal. Perhaps “liberal” is not the right word to describe the process outlined in the bill, but licensing boards will be able to attune their needs to a community’s requirements. However, might it not be better to retain three-year renewals as a check until the new system beds in and communities see the different ways in which the new laws are affecting them? At the moment, communities know that they can have their say when applicants for new licences advertise their applications. However, under the bill, such a system will go to a great degree and, if licences are to be renewed every 10 years, communities will have fewer such opportunities. I am concerned, at least in this initial phase, that any move to a 10-year renewal should come further down the line when people are more aware of what the new licensing hours mean.

**Jacqueline Conlan:** You are right to say that, 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.

It is important to point out that ministers have deliberately expanded the involvement of communities in the new regime, because they feel that communities must have a greater role and that the community’s voice must be heard. Indeed, the new system’s approach to sanctions and the introduction of licensing standards officers are designed to ensure that that voice is heard and that there are means of dealing with any problems. At one end, the licensing standards officer will be able to mediate between communities and licensed premises if there is a problem and, at the other end, there will be a much tougher range of sanctions with which to deal with problems that may arise. I believe that, as a result, the position of communities will be enhanced.

**Bruce Crawford:** I accept that that will be true in places where there are variations and the variations are on-going, but, under the new regime, if a pub decides to open for 18 hours a day, it will be able to do that for 10 years, unless some process is brought to bear that creates variation. At present, communities normally respond to on-going problems. When people see advertisements about licences, they think, “This is my chance to have my say.” My concern is that the silent majority will just put up with what they see as unsatisfactory behaviour and will not object. As the process will not involve asking people to object, as happens at present, people will need to take a much more proactive approach.

14:30

**Jacqueline Conlan:** That could be the case, but it is difficult to say how the new situation will compare with the present one, because we cannot anticipate how communities or individuals will feel about the process. However, the new regime will have flexibility. That goes along with the open-ended premises licences, because we must ensure that there is a system to vary such licences and a robust system for complaints to be heard. The system under the new regime will be robust.

**Mr Davidson:** My question is on the back of the questions from the deputy convener. The tourism and hospitality industry is the biggest employer in Scotland. Some festivals—in the Orkneys and the Western Isles, for example—last for months, not just for one day or a weekend. Is it expected that the guidance on the variation system will allow licensing boards not only to have variations for a couple of days—after public notice and consultation—but to build in at the beginning of each year variations in licensing opening hours to fit local economic and tourism needs? What guidance will be given on that?

**Jacqueline Conlan:** That issue has two aspects. First, licensees do not often run special events under their normal liquor licence. That situation will continue under the new regime, because the bill will introduce a system of
occasional licences, which is intended to cover voluntary organisations that run special events and licensees who run special events outwith licensed premises. The occasional licensing regime applies to festivals such as the Edinburgh festival.

Secondly, to return to the general issue of how hours will be handled under the new regime, boards will have an opportunity in their policy statement to say what type of hours should be allowed for events. The policy would feed through to the operating plans for which individuals would apply and to the occasional licences. There will be no facility under the new regime to have what are at present called occasional extensions. At present, boards can agree Christmas and new year opening hours on an annual basis, but that will not happen under the new system.

Michael McMahon (Hamilton North and Bellshill) (Lab): The bulk of the bill is about what, where, when and how, but my question is about who will do the licensing. In the past few months, the committee has had debates about the democratic accountability of the proposed regional transport partnerships. There is a danger that the same issue may arise with the present proposals, because of the concern that the proposed size of licensing boards will not allow a true reflection of the make-up of local authority areas, particularly larger ones. Has that concern been expressed to you and, if so, what answer did you give?

Jacqueline Conlan: The changes that the Nicholson committee proposed are different from those in the bill. The Nicholson committee suggested that boards should have a maximum of five people sitting at any one time, although the membership could be greater. That conclusion was reached because of problems with the existing boards. 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.

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.

Michael McMahon: Am I right in saying that a quorum could be as low as three if a board had a smaller number of members?

Jacqueline Conlan: That is also the case under the 1976 act.

Michael McMahon: So there would be no difference, as there could currently be as few as three members. That should surely raise concerns, which the bill could have addressed.

Jacqueline Conlan: Low quorums, such as three members, must be allowed so that smaller boards that are allowed to have a maximum of five people sitting are not penalised through not being able to reach a quorum. Boards with five members could be penalised if they had a quorum of five. There must be a little flexibility for smaller boards with only five members, but there is absolutely no problem with having 10 people sitting on boards. Obviously, a larger city board would want to ensure that as many of the 10 people as possible attended meetings.

Michael McMahon: Would it not be better to have a percentage quorum rather than a set figure? After all, three out of five members is a higher percentage than three out of 10 members.

Jacqueline Conlan: We did not consider that.

Michael McMahon: Perhaps the committee can consider that matter and draw to your attention what has been said.

Jacqueline Conlan: Yes.

Michael McMahon: Convener, may I ask a question that is not related to the question that I have just asked?

The Convener: Tommy Sheridan wanted to ask a supplementary question. We will take his supplementary question first and then return to you.

Tommy Sheridan: I would like to return to a more general issue, but, first, I would like to deal with one thing that strikes me about the size of boards, which I would like you to elucidate. There seems to be an attempt to move towards more devolved and localised decision making—there is the idea of local licensing forums, for example. However, you are suggesting that, for cities such as Glasgow, three councillors could be responsible for almost 500,000 people and for applications not only for pubs in the city centre—which is what everybody thinks about—but, more important, for the many complaints about local premises, particularly off-sales premises.
Is there room in the Executive’s thinking for considering subdividing local authorities along the lines that most of them are subdivided, so that there are area committees that would allow area boards and so that, instead of a single licensing board, there would be area licensing boards with local knowledge and local input? I do not know whether that is what is meant by “licensing divisions” in the bill. If it is, it is not clear enough for me. I want you to tell me whether a licensing division is the same as a licensing board. If the two are different, I am worried that licensing divisions are a sop to the idea of having more localised input, which will not be the reality. The idea of having three members for the whole of Glasgow in particular, and probably for Edinburgh and the bigger authorities, is simply nonsense, although my comments are probably not as relevant to the smaller authorities.

Jacqueline Conlan: 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 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.

On licensing boards and licensing divisions, we have not modernised the language of the 1976 act. However, a licensing division gives an opportunity to split a council area into smaller areas or divisions, which would perhaps allow a more localised approach. That tends to be done in the big rural areas—it is done in the Highlands, for example, where divisions deal with different areas.

Tommy Sheridan: So the intention is not for the city of Glasgow to have separate boards for the south-west, the south-east and the north-east. The intention is to have one licensing board that covers the whole city, whereas, in more rural areas where geography is the main issue, the intention is to have licensing divisions. Is that what you are getting at?

Jacqueline Conlan: No. What I am saying is that that is kind of what happens at the moment. As to the intention, I think that the bill makes the matter a little clearer. The decision is not one that the Executive would take; it is one for the local authority. If the local authority felt that there was the need for more licensing boards in Glasgow, it could take the decision to have them.

The Convener: We will return to some of Tommy Sheridan’s other points. Paul Martin wants to come in with a supplementary question.

Paul Martin (Glasgow Springburn) (Lab): Jacqueline Conlan said that it was inefficient for a board to have 20 members. Why is that the case?

Jacqueline Conlan: The Nicholson committee reported that many of the people from whom it heard said that it felt intimidating to appear before a board of 20 people. With such large numbers involved, people also do not understand what is going on. I have attended a meeting of the Edinburgh licensing board, which has quite a large membership, and know that if someone is sitting at one end of a very long table, it is difficult to hear what people at the other end are saying. It is inefficient and unnecessary for such a large number of people to take decisions. It is felt that decisions can be taken in a more effective way by a board that has a slightly smaller number of members.

Paul Martin: So no scientific approach was taken to the decision not to have 20 members.

Jacqueline Conlan: No.

Paul Martin: It is just that I notice that the Nicholson committee had 14 members and that the working group on off-sales in the community had 16 members. Why do you think that it is inefficient for a board to have a higher number of members?

Jacqueline Conlan: Do you want me to give an answer? I have one.

Paul Martin: You would have given the advice that helped to create those groups. You helped to create a group of 16 people and another group of 14 people and yet your advice is that licensing boards should have only 10 members.

Jacqueline Conlan: The reason why the Nicholson committee and the expert group had those numbers was they had to accommodate sectoral interests. Obviously, the Executive would have faced a lot of criticism if all those interests had not been represented around the table.

Paul Martin: Why should the licensing boards, too, not be representative of sectoral interests? I appreciate that the process of coming before a board may be intimidating for some people who are not familiar with the process. However, there is still the principle that the licensing board should be representative of various ward interests. You are saying that the principle of representation was a good one for the committee and the working group but not for the boards.

Jacqueline Conlan: The additional point that I should make in response is to say that the councillors who sit on licensing boards become board members in order to take decisions that affect the whole of the city. They do not necessarily take decisions that relate to their own interest. The idea behind having local councillors
on the licensing board is more to do with local knowledge than one person's individual interest. Local knowledge is built into the system in other ways as well, particularly through the existence of the local licensing forums, which can give information directly to the boards.

Paul Martin: I will not take up much more of your time, but I think that you misunderstood the question. The point that I am making is that it is perfectly feasible for councillors to have an interest in representing one of the council's overall objectives, rather than just a local interest. What is wrong with that? Surely that is the same principle that you described in relation to the Nicholson committee and the working group.

Jacqueline Conlan: I do not think that there is anything wrong with that, but I stand by what I have said.

Paul Martin: The working group had 16 members, but the council licensing boards are to have 10 members.

Michael McMahon: In your opening statement, you spoke about the fact that the Nicholson report was four years old. I have spoken to senior police officers in Lanarkshire who are concerned that, since the publication of the report, they have been dealing with a new development that is addressed neither in the report nor in the bill. I am referring to the new way of delivering drink to people's homes, which is commonly known as dial-a-drink or—in Lanarkshire—dial-a-swally. If there is nowhere in the bill for that new development to be addressed, how can we deal with the concerns of those police officers?

The police officers gave me the example of an initiative that they conducted in a village where they felt that there was an over-provision of off-licences. As part of an overall strategy on antisocial behaviour, the police put in additional resources to try to get the licensees in the village to stop selling drink to younger people. After the licensees came together to develop dial-a-drink, the police followed a delivery from one of the shops to a house, in which they discovered 20 young people who had chipped together to buy £90-worth of Buckfast and whatever else they were drinking. They were divvying out the drink when the police came to the door. There is nothing in the bill to address that problem.

14:45

Jacqueline Conlan: I am delighted to tell you that there is a provision in the bill that addresses that problem, of which we are very aware. We have made it a specific offence to make a delivery between 12 midnight and 6 am, except to licensed premises. The provision was designed specifically to deal with the problems that you have highlighted. I was not aware that they existed in the area that you have mentioned, but I was aware of them in Fife. The issue was put to ministers and the provision in the bill to which I have referred is designed to deal with it. There are other provisions relating to remote sales of alcohol and deliveries to young people that will impact on the problem.

Michael McMahon: According to police officers, there is no current requirement for licensees to get proof of age when they deliver. That is the issue about which the police officers are concerned. There is nothing in the bill that empowers the police to prevent a delivery from being made at 9, 10 or 11 o'clock at night to a group of young people who will then go out to a local park and cause the nuisance that the police have been trying to avoid by cracking down on off-sales. The bill needs to address the specific concern about how the police can control the off-premises sale of alcohol to young people.

Jacqueline Conlan: You are right to say that this is a difficult issue, because to some extent the bill continues the position under the 1976 act, which allows deliveries to be made to a young person who is opening the door of a family residence. If a delivery is to a family residence, it can be made. Perhaps the issue is more where the contract and sale are made.

Michael McMahon: Exactly. That is the point that I am making. The police see nothing in the bill that will give them powers to address the issue.

Jacqueline Conlan: I am not sure about the specific concerns of the police officers to whom you have spoken, but the no-proof, no-sale scheme is a key aspect of the bill. Licensees must ask for proof of age when there is any doubt about whether a person is 18. The bill stipulates that a notice will have to be posted next to the place where sales are made. It also spells out the types of proof that must be requested, which will be added to by regulation. We worked closely with the licensed trade on the no-proof, no-sale scheme. The off-sales sector, in particular, was keen that that should be included in the bill. We hope that it will go some way towards addressing the concerns that you mention. That is all that I can offer at the moment.

The Convener: I have a supplementary to Michael McMahon's question. If a sale is made over the telephone, how is the licensee to know that the person to whom they are selling is under age? Many people who are 16 or 17—perhaps even younger—may have access to debit cards that enable them to make purchases over the phone. Would that be deemed the point of purchase? I cannot see how a licensee could judge over the phone whether a person was under age.
Mr Davidson: I want to pursue the issue of proof of age. Has no consideration been given to ensuring that when an off-sale that has been made by telephone is delivered, the delivery person should receive a receipt for the delivery and see the purchaser’s proof of age, in order to eliminate the problem? Supermarkets make deliveries that may include alcohol. The alcohol may not be intended for a child, but there are some fairly glaring loopholes in the bill. People could get debit cards at an early age, as has been said, or an adult could be induced to use their credit card to make a purchase of alcohol that was being delivered for someone else. What will happen if the police do not have the powers to deal with that?

Another problem that seems to be being clamped down on is sales from grocery vans that travel round rural areas. Those vans may wish to carry alcohol for sale under the regulations to remote communities in which people do not have access to shops. How are you going to deal with that aspect? The general issue of off-sales is major and it is obvious that a firm view on how to deal with proof of age and where alcohol can be sold from has not yet been reached.

Jacqueline Conlan: Remote sales are difficult to deal with. We are not just talking about sales over the telephone; we are also talking about internet sales. We have gone as far as we can by ensuring that the place from where the sales are dispatched is subject to a premises licence so that there is an opportunity for the board to apply licensing conditions.

People do not have to show proof of their age at the door of their house. I am not sure whether there is anything more that we can do to tackle that. I do not think that I can give you a firm answer on that at the moment. I would also need to get back to you on your point about grocery vans.

The Convener: I will come on to the broader issue of young people. One of the Executive’s policy intentions is to reduce the incidence of under-age drinking. You will be aware that Sheriff Principal Nicholson’s submission highlights the concern that the bill appears to be silent on young people. Although there is some mention of young people in paragraphs 18, 86 and 139 of the policy memorandum, the sheriff principal does not feel that the bill deals with the issue. How do you respond to that?

On an associated matter, there has been some debate about the test purchasing of alcohol by young people. I am aware that there is a problem because an offence would be committed by the young person who was test purchasing the alcohol as well as by the licensee. Has the Executive given any thought to whether it wants test purchasing to be used as a means of finding out whether a particular licensee is flouting the regulations?

Jacqueline Conlan: On Gordon Nicholson’s comments, 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. That was also discussed by the expert group and the condition has been endorsed by ministers. I have spoken to Gordon Nicholson about his point that there should be an overarching provision on that in the bill. I am quite happy to consider that.

The Convener: I also asked about test purchasing.

Jacqueline Conlan: 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.

The Convener: I appreciate that it is an issue for the Lord Advocate. However, as I understand it, a young person is not committing an offence by trying to buy tobacco.

Jacqueline Conlan: You are right. There is a complication with alcohol and that is one of the problems.

The Convener: There are some supplementary questions. If Sylvia Jackson, Tommy Sheridan and Bruce Crawford could be brief, we will be able to move on to other issues.

Dr Sylvia Jackson (Stirling) (Lab): The part of the policy memorandum that is concerned with under-age drinking says:

“the most common source of alcohol for these youngsters was a small licensed grocer or corner shop, with 33.2% having purchased alcohol from one of these outlets.”

As a member of the Scottish Parliament, I have heard that there is a considerable amount of antisocial behaviour in some areas as a result of youngsters getting their hands on alcohol. What extra protection is there in the bill to stop that kind of antisocial behaviour?
Jacqueline Conlan: The main thing on which we and the licensed trade have worked is the no-proof, no-sale scheme. Ministers wanted to tackle under-age drinking, particularly in relation to the off-sales sector. The off-sales sector supports the no-proof, no-sale system. The sector wanted to have the backing of legislation, because refusing sales in small stores can be intimidating for people. The no-proof, no-sale policy requires the display of a notice and the request of proof. The Executive will accredit types of proof.

As for the wider policy, the bill provides many other ways to deal with problems with premises that may be linked to under-age drinking. For example, communities can have a role in discussing over-provision and boards will have a duty to have a policy on over-provision and taking forward complaints against premises.

Dr Jackson: Will you elaborate on those points? The matter is important. The working group on off-sales in the community suggested that community councils should be statutory consultees. How will you create more of a link with a community where a problem exists?

Another issue that has been mentioned to me arises when what starts as a fairly well-balanced grocer’s shop ends up having sales that are largely of alcohol. How will you address that?

Jacqueline Conlan: The new system will deal with the second point, because a problem that the Nicholson committee saw in the existing system was the drift of premises away from their original purpose. That drift will not be possible with operating plans, because for any drift beyond an operating plan, an application will have to be made to a board for a variation to the operating plan. That variation would have to be advertised to the local community, which would have an opportunity to have a say before any decision was taken.

The bill deals with the wider aspects of community involvement in several ways. You are right about the statutory consultee idea. Licensing boards will send community councils copies of all applications for licences, so they will have the opportunity to comment. However, a need was felt to reflect the fact that a local community can be a bit wider than the community council, so local forums should have community representation, which need not be from a community council—it could be from a local housing group, residents group or whatever was appropriate.

The local forum’s role is critical, because it has the opportunity to comment on a board’s whole policy statement before that is finalised. If a board disagreed with something that a forum said, it would have to give reasons for not following a forum’s approach.

The bill says that a local community must be consulted on over-provision, which was a key issue for ministers that communities raised. Ministers wanted to have a specific means to tackle that in the bill, which is the requirement for boards to consider over-provision more proactively and develop a policy on it.

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.

Dr Jackson: You said that we would be able to examine the situation closely when shops have moved to selling alcohol much more than they did. How will that be operationalised? Will a grey area in the middle exist? How precise will plans be?

Jacqueline Conlan: The operating plan will have to be precise, because it is the means by which boards have information that allows them to decide not only whether to agree to a licence but which licence conditions are appropriate. National as well as local licence conditions will be available. The expert reference group has submitted to the Parliament a paper on operating plans that gives some idea of the position. Operating plans will have to be detailed. They are critical to the new system’s operation. We need to develop that feature carefully.

Dr Jackson: Can we get a copy of that paper?

Jacqueline Conlan: You should have a copy.

The Convener: Are the questions that Tommy Sheridan and Margaret Smith wish to ask on the issue of young people, or are they general questions?

Margaret Smith (Edinburgh West) (LD): My question is on off-sales.

Tommy Sheridan: Mine is to do with the policy objective.

The Convener: If we go back to brief supplementaries, I will come back to you both on your more general questions.

Margaret Smith: I was going to ask one of my general questions as a supplementary because that seemed to be the way that things were flowing.

The Convener: I will take Tommy first.
15:00

Tommy Sheridan: You have talked about the four key issues that are mentioned in the policy memorandum and the convener referred to reducing under-age drinking. The legislation has been four years in the making. There has been an awful lot of talk, and an awful lot of work has been done. Why is there no policy objective or desire on the part of the Executive to reduce alcohol consumption? Why is there neutrality about alcohol consumption? I am concerned that there is a mixed message going out that it is okay to drink—in other words, to consume a drug that can have harmful effects—but not to drink excessively. We would encourage people to exercise—it is healthy to do so—but not to over-exercise. Why is there neutrality about the part of the Executive to reduce alcohol consumption? I am concerned that there is an awful lot of talk, and an awful lot of work has been done. Why is there no policy objective or desire on the part of the Executive to reduce alcohol consumption? Why is there neutrality about alcohol consumption? I am concerned that there is a mixed message going out that it is okay to drink—in other words, to consume a drug that can have harmful effects—but not to drink excessively. We would encourage people to exercise—it is healthy to do so—but not to over-exercise. Why is there no overarching policy objective that says that people do not need to drink?

Rab Fleming: The remit of the bill concentrates more on managing the supply side of alcohol than on addressing the demand side. We see the work that has gone on in the Health Department on alcohol abuse as where the lead should be taken on policies to address the demand side. When the national licensing forum is up and running, it will provide a good vehicle to bring the building blocks of the policy together because it will be jointly chaired by the deputy ministers responsible for the bill and for health.

Tommy Sheridan: I am sorry to contradict that a bit, but the policy memorandum and the associated documents all draw heavily on crime and health problems that relate to alcohol misuse. The policy memorandum presents policy objectives, but those do not include reducing alcohol consumption as a whole. It talks about reducing under-age and binge drinking only. Are you saying that a health-related statement will come out in some form that will say to Scotland, “Look, you don’t have to drink to enjoy yourself and to socialise”? Will that be an objective?

Rab Fleming: Almost exactly the same statement that you have just made was made when we launched the bill, but perhaps it was not strong enough. The national licensing forum, which will bring together the work that we are doing with the work that our colleagues in the Health Department are doing, will present the opportunity to make a strong statement.

Margaret Smith: There seems to be some concern that the controls on irresponsible promotions are directed very much at pubs and not at off-sales.

Rab Fleming: We recognise that concern. In the on-trade, there is an obvious link between promotions and the consumption of alcohol. It is much more difficult in the off-trade to establish a link between purchase and the pattern of consumption. Our intention is to commission some research in the near future to investigate that. If that research is carried out quickly, I hope that we can incorporate it into the bill as the bill progresses.

Margaret Smith: What is the likely timeframe on that? Will the research be done within three months, or within six months?

Jacqueline Conlan: We cannot be specific about that at the moment. We have arranged to meet Alcohol Focus Scotland, among others, to talk about the research that could be done. Once we have pinned that down, we will be able to consider the timescale for carrying out the research. We will not be in a position to amend the bill while it is going through, but there will be a transitional period before the bill comes into effect, and we will have powers—if we are given them by the Parliament in the bill—to amend the schedule that has conditions on promotions. It would be possible to extend those conditions to off-sales if, following the research, it became clear that that was the appropriate route to go down.

Margaret Smith: I am pleased by your comments in that they do not completely shut the door on the question of how irresponsible drinks promotions are defined. We know about happy hours and so on, but the definition could be extended quite easily to include promotions by off-sales and supermarkets—those two examples immediately spring out of the list—for alcohol products that are likely to appeal to under-18s. It would be irresponsible for a supermarket or off-licence to push sales of such products particularly hard or indeed to offer alcohol as a reward or prize. It seems to me that, even without the benefit of research, we can apply the definition to off-sales and to supermarkets, given the concerns that colleagues expressed earlier about the fact that many people purchase alcohol from supermarkets.

Do you have any views on taking the bill’s provisions further by including off-sales? How likely is it that the bill will be extended?

Jacqueline Conlan: All that I can tell you is the position that the deputy minister, Tavish Scott, has reached, which is that he will look at the research. He has a meeting tomorrow with Alcohol Focus Scotland and he has agreed to meet the off-sales licensed trade. We need to get the supermarkets and the grocers side of the trade around the table to hear about their experiences and the best practice that they have in place at the moment. It is important to do that first. The promotions policy in the bill is based on tackling binge drinking. As Rab Fleming said, we have more evidence to make the link in the case of on-sales. It is more difficult to make that link and find evidence for it in the case of off-sales, but that is what we need to do before we can extend the policy.
Bruce Crawford: I pick up the point that Margaret Smith made about young people and drinking. She asked a good question. When the minister meets the off-sales licensed trade, why can he not simply ask, “When you sold Bacardi Breezers at this price, how many did you sell? When you sell them at a lower price, how many extra do you sell?” They are purchased in shops, but shops do not see the end result. We can be pretty sure that there are certain products in the market that are targeted at younger people. I would not have thought that there is much science in asking the supermarkets for information on the increase in sales that occurs when the products are cheaper. That information must be available on the supermarkets’ computer systems. I hope that you will accelerate the process by asking simple questions rather than requiring lengthy pieces of detailed research.

On irresponsible promotions, it is bad enough when youngsters get hold of drink, but it is even worse when adults sell it or give it to them. No matter what we try to do, that will continue to happen, given the current environment. What provisions are in the bill to strengthen the powers that the police have to stop adults buying alcohol to give or sell to young people?

Jacqueline Conlan: There are a number of provisions. First, the no-proof, no-sale scheme has been designed to go some way to tackle the problem. For the first time, the notice that must be displayed in premises will say specifically that it is an offence to buy alcohol on behalf of a young person, to try to make that a bit more prominent in licensed premises. Under the bill it is an offence to do that, as it has been since 1976.

In addition, the police will have more powers to deal with problem premises. There is a scheme in the bill about how complaints are dealt with. The police, like anyone else, can bring a matter to the licensing board and make a complaint about licensed premises. Before they do that, they will be able to liaise with the licensing standards officer, who may be the person who brings problems with under-age drinking to the attention of the police in the first place. There is an opportunity to deal with the matter locally, but if it cannot be dealt with, either the licensing standards officer or the police can make a formal complaint to the licensing board and get access to the much more flexible range of sanctions under the bill.

Bruce Crawford: That deals with the licensee but not specifically with the person who is buying the alcohol. Are there any thoughts about more punitive measures aimed at people who procure alcohol to pass on to youngsters? They know that they are breaking the law. I do not think that signs will make any difference to them.

John St Clair (Scottish Executive Legal and Parliamentary Services): Following Sheriff Principal Nicholson’s statement that some of the penalties for selling alcohol to young people and allowing them to consume it were too light, there has been a significant increase in the penalties for three offences in particular: under section 93, the sale of alcohol to a child or young person; under section 94, allowing the sale of alcohol to a young person; and under section 97, allowing a young person to consume alcohol—that might apply not to the seller but to a parent. The penalties have been increased to level 5 on the standard scale, which is up to £5,000, so there has been a hefty ratcheting up of the sanctions.

Bruce Crawford: What consideration was given to requiring every person who sells alcohol in an off-licence, whether the local store or supermarket, to be certificated to do so? Requiring them to be licensed would be going too far and I accept that they will all be trained a bit better in future. That way, they would not only go through the training but at the end of the process they would have a bit of paper to say that they were qualified to sell alcohol.

Jacqueline Conlan: It comes back to the training provisions. I can tell you more than you would pick up from the text of the bill about what is intended. There are lots of different levels of training. For personal licence holders, there has to be one premises manager for each premises, who holds the personal licence. The personal licence holder will have to have extensive training to allow them to hold the licence. They will be issued a licence that is valid for 10 years and be subject to all sorts of responsibilities as a result. In addition, all permanent members of staff serving or selling alcohol on licensed premises must be trained to a national standard that is accredited. They would have a certificate at the end of that process.

Bruce Crawford: Who would be responsible for saying whether the certificate can be awarded? Would it be the local authority or the training provider?

Jacqueline Conlan: We are going to ask the national licensing forum to do a fairly extensive piece of work on the types of training that should be accredited—we have tried to leave a few options in the bill for how we might proceed. We have options such as accrediting the training provider, accrediting the training course and setting out the content of the course. We want the forum to consider a number of possibilities to establish the best way to proceed.

Bruce Crawford: That is useful. Thanks very much. I have a question on over-provision, but I am not sure that this is the right time to ask it.
The Convener: I will bring in Tommy Sheridan to ask his other questions, one of which is on over-provision. You might be able to come in on the back of it, Bruce.

Tommy Sheridan: I have a question on over-provision, but before I ask it I want to ask Jacqueline Conlan about one of the policy objectives, which is providing a voice for communities. You have mentioned the local licensing forums several times today. Is it envisaged that the forums will provide the voice for communities? If so, how many members of the community do you envisage being members of the forums?

Jacqueline Conlan: The bill does a number of things to improve the position for communities; local licensing forums are part of 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. Licensing standards officers will be able to mediate with communities. There is a policy on over-provision and a much wider range of sanctions is available under the bill. It is about taking all those measures together. We have set out in schedule 2 how local forums should be formulated. There is a list of people from which membership of the forums should be drawn, but we have not set out specific numbers or communities.

Tommy Sheridan: As you said, the list is set out in schedule 2. You make a number of prescriptions. You say that the licensing standards officer must be a member of the forum and that the people relevant for its membership include:

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

Based on what you have prescribed and given that your forum is to have no more than 10 members, that would give a maximum of three community reps. It could be fewer than three.

I ask you again to consider that number will not improve local community involvement in serious decision making, particularly in larger communities. It would be much more appropriate if local licensing forums were really local and were based on bigger authorities breaking down into appropriate areas. Is there room for you to consider making local licensing forums more appropriately local? Having one licensing standards officer whose job is to liaise with the local community will mean that, in the city of Glasgow, they will be liaising with 400,000 people in very different communities. Do you really think that whoever is in that position will be able to fulfil the requirements of the job description?

15:15

Jacqueline Conlan: We have set out a minimum in the bill, but that does not mean that in practice there cannot be a good relationship with the board, or that more than one licensing standards officer cannot be involved. Because the forum’s policy role is being set out in legislation, you could say that there is a need to set some boundaries around it. However, on the size of the forum, you might want to ask questions of the minister.

Tommy Sheridan: That relates to the next central question—

The Convener: One second, Tommy. I want to ask a supplementary question on the forums before you go on to address over-provision.

I note that there does not seem to be a quorum for the forums, which could result in a small number of members taking decisions. Does the Executive intend to revisit that issue? In addition, are you concerned that, if a forum is chaired by a local councillor, a conflict of interest could be created if the forum made a decision that was at odds with a decision of a licensing board?

Jacqueline Conlan: We note the point on a quorum and will take it away.

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. That answers the question about a councillor who is a member of a licensing board chairing a forum.

The Convener: If I am reading you correctly, you are saying that you would not expect a councillor who was on a local forum to serve on a licensing board.
Jacqueline Conlan: That is correct.

Tommy Sheridan: This question relates to problems that arise from the assessment of over-provision. My concern is who will assess over-provision. What level of community involvement will there be in deciding on over-provision?

I recently attended a Glasgow licensing board hearing as a resident in the south-west of Glasgow to protest about the extension of hours for a particular premises. As I expected, the board’s knowledge of the area was virtually nil, because its members do not live in the area. If you want to improve community involvement, the idea that we in Glasgow should attend one city centre court and that it should determine everything that goes on in Glasgow is completely unacceptable. Who will input into assessments of over-provision? Who will do the assessing? How will over-provision be determined? If it is done via the local licensing forum, is not my earlier point relevant: that for a city the size of Glasgow there might be three community reps, but they will be covering the whole city?

Jacqueline Conlan: When a council decides to divide its areas into licensing divisions, there can be a forum for each division, so there is flexibility. If the council decides that one central board and forum are not enough, it can subdivide the structure into as many parts as it thinks appropriate.

We have been careful to ensure that—alongside the sections that set out the role of local licensing forums—section 7 ensures that the licensing board has to consult “persons resident in the locality.” That is another safeguard to ensure local consultation on over-provision.

It will be for the licensing board to make the assessments but we will ask the national licensing forum to consider over-provision. People will need advice, which is why the national licensing forum will consider this difficult issue. Its considerations will then be part of statutory guidance to be presented to Parliament for debate before the introduction of the new regime.

The guidance would have to give boards an idea of what sort of issue to consider. Boards will decide for themselves how best to consider localities. When considering over-provision, a board might decide to consider just a particular street, or several streets, or a council ward, or whatever was an appropriate area. Feedback we received from boards suggested that they needed that flexibility.

The bill specifically says that, in carrying out the assessment, it is important that boards take account of the “number and capacity” of licensed premises. We acknowledge that over-provision is not just about new licensed premises but about the expansion of existing premises, increases in hours and so on.

Tommy Sheridan: What assessment of over-provision will be made during the inevitable transitional period? I worry because some communities already feel that there is over-provision. If you set the starting point as now and say that only what is added to the current provision will be assessed, some communities will feel let down. They are hoping for a realistic assessment of the over-provision that already exists.

In the past, communities could not do anything about over-provision. As you know, community councils could not complain on that basis; they could complain only on a planning basis. Are you saying that they will now be able to complain on the basis of over-provision? How will that work during the transitional period?

Jacqueline Conlan: They will be able to complain. Over-provision will be considered during the transitional period because boards will have to develop their policy statements before the new regime can start. Over-provision will be part of that. Boards will have to make assessments during the transitional period and that is when consultation with communities will start.

You are right to say that the assessment will not be retrospective. If a board decides that an area is over-provided for, the bill will not provide a way of closing down a number of those licensed premises. However, it will provide a way of preventing the situation from getting worse by preventing new licensed premises from opening or by preventing existing licensed premises from expanding.

Bruce Crawford: Over-provision has been exercising my mind. Is the way in which we deal with over-provision about restricting the number of hours in which off-licences, in particular, operate? Or is it about restricting the number of outlets? Which is the best method?

At the moment, we have no definition of over-provision. We will therefore have different boards—or even different divisions within the same board—coming up with different definitions. I hope that the national licensing forum will produce an overarching definition of over-provision. It is a bit like affordable housing—how the heck can we define affordable? No one ever has, and we cannot allow ourselves to get into the same situation here.

In effect, we will be regulating the market. I do not necessarily disagree that we should do that, but my biggest concern is that instead of replacing them with people who will do things better, we will...
allow bad providers to continue to operate. I wonder what the Executive thinks about that.

In a restricted market in areas in which there is no reinvestment, a person who runs a pub might be hanging on by their fingernails and not providing a good product. The market would make such a person go out of business and someone would replace them, refresh the service and bring in new investment. Has the Executive reflected on that? Have there been danger signals that there is a potential problem?

**Jacqueline Conlan:** I agree with everything you said about over-provision. The guidance on the role of the proposed national licensing forum will be crucial. It is certainly the intention to provide good guidance to boards on how they should take matters forward.

Your comments about the quality of the product and the nature of the premises that exist raise two issues. First, there is the market aspect, with which we cannot interfere. We expect the discerning consumer to decide where to take their business. In a sense, the bill will address your concerns in that it will require people to raise their game a bit. There will be national standards on training and it will not be sufficient to run a low-quality service, because training will require people to raise the level of their service—considerably, in some instances.

In addition, boards will be able to apply licence conditions. National licence conditions will apply in some areas, particularly to late-opening premises, and will tend to deal with matters that relate to the licensing objectives, which are kept in mind throughout the bill. Matters such as public safety and public nuisance can be addressed through, for example, closed-circuit television and door staff, as well as through the use of plastic glasses or the clearance of glasses that are left outside premises. Boards will also be able to apply local licence conditions that are appropriate to premises, which might lead to better control of some aspects, particularly those that impact on the community outside the premises.

**Bruce Crawford:** I have a final question—

**The Convener:** Is it short?

**Bruce Crawford:** It is very short. If there are three off-licences in one street, the board decides that there is over-provision and does not grant licences to all three premises and two of the off-licences eventually close down, will not the off-licence that remains just get more business? There would be the same level of provision: no less alcohol would be available.

**Jacqueline Conlan:** I come back to the point that the bill regulates a legal product. The licensing objectives deal with issues of public safety, nuisance and health that are linked to the product. As I said, the bill represents a regulatory aspect of a wider picture, which includes the action that our colleagues in the Scottish Executive Health Department are taking through, for example, the plan for action on alcohol problems. Such initiatives more directly consider the consumption and misuse of alcohol, education and other ways of tackling problems.

**Dr Jackson:** A recent episode of “The Enforcers” was about the unregulated sale of tobacco to children. What kind of training for staff do you envisage? Will everyone who works on a checkout go through training? I see that you are nodding, so I assume that the answer is yes.

**Jacqueline Conlan:** Yes, that is right.

**Dr Jackson:** If that is the case, will the responsibility lie with checkout staff, so that if they do not ask for proof of age they could be open to a criminal charge?

**Jacqueline Conlan:** There is a threefold responsibility. There is a responsibility on the individual, but because the bill deals with licensed premises it will also place responsibilities on personal licence holders who act as the premises manager and the premises licence holder. There are a number of ways in which the new regime will tackle problems.

**The Convener:** David Davidson has questions on the broader issue of grandfather rights in the transitional arrangements.

**Mr Davidson:** Yes. The witnesses seem to be hinting that they are beginning to come to a view on grandfather rights in the transitional period, which was not obvious before today’s meeting. Issues to do with the marketplace have been raised. Some people, for example in Aberdeen, are already investing in new premises and upping their game by training staff and licensed doormen.

How will you give guidance on the view that local boards should take of existing premises? Will there be set, tick-box guidance under which, if premises do not fulfil certain criteria or if there is police or court evidence that they have been a scene of disturbance, for example, they will automatically be excluded? We are trying to pin you down early on when you will come clean on your transitional arrangements, roughly what the guidance will say, whether it will be national guidance and what variance will be allowed for the local boards.

15:30

**Jacqueline Conlan:** I hope that I will not disappoint you, but I can tell you the position that ministers have reached. We have not, for a number of reasons, taken any decision on
transitional arrangements. We feel that we need to have detailed discussions about such arrangements with the licensed trade and licensing boards. There are a number of options—you have outlined some—but we need to discuss them. It is also important that we have some certainty about the shape of the new regime, which will come through the parliamentary process.

We will start to talk to licensing boards and the licensed trade about the transitional arrangements soon. We have been talking to them about transition and realise that they are worried about it. It is an important issue on which we should start discussions now, although the intention is clearly that the transitional arrangements will be made by regulations after the bill has been passed.

On grandfather rights, there is a need for the introduction of the new system to result in positive change. Ministers have made it clear that it would not be acceptable for there to be no change for some existing licence holders and that they would not want to create a two-tier system in which existing licensees did not have to comply with the promotions policy or the no-proof, no-sale policy, for example. However, from talking to people about grandfather rights, I have found that there is quite a lot of variation in what is understood by the term.

We need to consider how we move licensees from the existing system on to the new system. For some licensees, grandfather rights are simply about not having to apply for a new licence and having some kind of procedure to transfer across to the new licence. That is what was done in England and Wales and it is an option that we can discuss with the licensed trade, but the background to it is that licensees would have to comply with the new conditions, such as the no-proof, no-sale policy, through their licences under the new system.

Mr Davidson: Forgive me if I am pushing you, but the financial memorandum to the bill must specify costs. Would it not be more sensible to state, clearly and well in advance of the bill’s being passed and the regulations’ introduction, the general obligations that licensees will be required to fulfil if they are to be able to enjoy a succession of the rights that they already have so that they know in advance whether they will have to rush out and take all sorts of court action, which might impede the bill’s passage and, in the process, impose a great cost on the trade, the Scottish Executive and, possibly, councils?

Jacqueline Conlan: It would not have been feasible to develop policy on transitional arrangements before the shape of the bill was settled. The minister has been clear that the key to the transition is that licensees be given sufficient time and have a very good understanding of what is required. The passage of the bill is only the first step towards a new regime; we will have regulations and guidance to produce, which could take 18 months, and that will be done before boards create their policy statements, which will happen before we get to a transitional period. There is time for the transition to happen, and the intention is that the new system will not be introduced in such a way that licensees are put at a disadvantage by not knowing what to expect.

Mr Davidson: Is it the intention that the regulations will come to the Parliament for an affirmative decision?

Jacqueline Conlan: The guidance that will be introduced under the new system is the key thing, and the procedure specified in the bill for that would involve debate by the Parliament.

Mr Davidson: Convener, do you want me to move on to the next subject?

The Convener: I think that Michael McMahon wanted to ask a supplementary question first.

Michael McMahon: I will ask the question later, because it is on another issue.

Mr Davidson: I will ask about another area about which there seems to be quite a bit of debate. I refer to the regulations that are proposed on the status of, and police access to, private clubs. How will those regulations impinge on clubs of various types, ranging from students unions to working men’s clubs, with which there do not seem to have been tremendous problems in the past? There is also the difficulty that some clubs, such as rugby clubs, might not have a full-time steward who can become the licensed person. How will that be dealt with?

Jacqueline Conlan: Ian Fairweather can give more detail, but I will start by saying that we have had much discussion with clubs. We have developed the position with their full co-operation and, as far as I know, they are happy with it. The police will have access to clubs in future. Clubs’ special status will also be recognised through licence conditions.

Ian Fairweather (Scottish Executive Finance and Central Services Department): The Nicholson report recommended that clubs should be brought into the system and that a provision should protect their special nature. That is what section 117 does. It gives ministers a regulatory power to exempt clubs that meet certain conditions. All those conditions were set out in a memorandum to the Subordinate Legislation Committee. Do you want me to read them out?

Mr Davidson: No; that is fine.

Ian Fairweather: The information is available for you. All those clubs will be exempt from the likes
of the over-provision assessment. A further power will allow clubs to be exempted from the requirement to have a personal licence holder, who is known as a premises manager in the bill.

Mr Davidson: Will that cover inappropriate promotions, which we have discussed?

Ian Fairweather: I am not sure.

Jacqueline Conlan: Under the regulatory powers in the bill, we intend to exempt very small clubs from the requirement to have a personal licence holder. That has been a concern, particularly of bowling clubs that have very few members and are very small but have the capacity for members to have a drink. We have said that we will examine that.

I am sorry; I have forgotten your other question.

Mr Davidson: It was about promotions.

Jacqueline Conlan: One advantage of a non-differential pricing route over a minimum pricing route is that it can be applied equally to private clubs and to other licensed premises. It does not prevent such clubs from having lower prices, as they traditionally do, but they will have to comply with the rest of the policy.

Mr Davidson: Will a smaller club that will be exempt be defined clearly?

Jacqueline Conlan: Yes. That is the intention.

Mr Davidson: Will that be in the bill?

Jacqueline Conlan: It will be in regulations.

Margaret Smith: Why is no provision made for objectors or personal licence holders to appeal? Sheriff Principal Nicholson has expressed concerns about that. I pick up some of the points that Tommy Sheridan made about involving communities and ensuring that they have a voice. Not having an appeal provision for objectors is slightly worrying.

John St Clair: Perhaps an apology is due to the committee if a misunderstanding has occurred. The provisions in the bill do not reflect the Executive’s final position on appeals. They were holding provisions pending discussions that we had with sheriff principals on the mechanics of how Sheriff Principal Nicholson’s recommendations about appeals would work in practice. We have successfully concluded talks with sheriff principals and have drafts that we will recommend to Parliament at stage 2 or perhaps before then.

Those provisions will meet your concerns. We will list all the substantive types of decisions that boards can make by section. Those will be appealable. Objectors and applicants for reviews will be allowed to appeal.

Subject to what the Parliament says, we expect to follow Sheriff Principal Nicholson’s recommendation that appeals will go in the first instance to a sheriff principal. In most cases, we would expect a sheriff principal to hear those appeals. However, we propose that he should be given the power to delegate an appeal to other sheriffs in his sheriffdom if necessary.

The final point is that we have always been concerned about the slightly draconian effect of immediate suspension or the board ordering a licence to terminate there and then, which might put a business out of operation before any appeal was heard. We propose to include a provision in the appeal sections whereby, when such an order is made, a person can go straight to the sheriff principal if he lodges an appeal—which can be done quickly—and seek a suspension of that effect. The sheriff principal or his sheriff could suspend the effect of the suspension pending the appeal if, considering the circumstances, they think that that type of order is unreasonable or disproportionate.

Margaret Smith: That is excellent. You have answered my supplementary question.

The Convener: I have one other issue to raise, on objectors. You will be aware that Sheriff Principal Nicholson has voiced concern that the definition of objector in the bill is too wide and leaves it open for someone who has no geographical locus on a particular application to submit an objection. Sheriff Principal Nicholson says that that goes some way beyond the real and material interest test that is proposed in the Daniels report and that it goes further than the recommendations of the Nicholson report. Do you have any concerns about the breadth of objectors that are allowed? Do you see it adding to the workload and causing problems for the licensing system?

John St Clair: A lot of thought has gone into this. Although we cannot totally predict the future, our take on it is that there is a growing tendency for the courts to allow representative groups to participate in other civil cases. We did not want to refuse, in principle, any representative group or individual access to the objecting system; we wanted the system to be as transparent and democratic as possible.

On the other hand, we did not want to overload the system with a lot of unnecessary objections from busybodies and people who have no real interest. With that in mind, we thought that the best policy was to have some sort of choke mechanism, or filter; hence, we included the provision whereby the licensing board can turn down vexatious or frivolous objections. We envisage that working if somebody objects for the sake of it, to be annoying. That would probably
come under the term vexatious. If they came up with some vacuous, fatuous and childish points, the objection could be turned down as frivolous.

There have been cases of somebody who has no connection with an area coming up with some theological point. That might be a difficult one to call the first time. The licensing board might accept the point the first time, but not the second time, by which time what that person is on about will have become well known. The proposed model allows a democratic, open input for objections but has an overrider, or choke-off, to stop people being ridiculous and abusing the system.

The Convener: In his written submission, the sheriff principal makes the point that someone who has a genuine, principled objection to the sale of alcohol might object and that it would be difficult to term such an objection either frivolous or vexatious. He seems to suggest by implication that the real and material interest test that Daniels proposed might be a better model.

John St Clair: We considered that carefully, but there are difficult drafting questions around using the model of real and material interest. Catching that idea would require a significant expansion of the text. We thought letting everybody make objections, but filtering them if there were problems, the more pragmatic approach and the one more likely to achieve the effect that we are after.

The Convener: Do you feel that the terms that are used would deal with the example that I gave—someone who makes a principled objection or series of objections to the sale and consumption of alcohol?

John St Clair: Yes. If the objection was substantially the same every time, it would be caught.

The Convener: Tommy Sheridan has a brief supplementary question.

15:45

Tommy Sheridan: I thank you, convener, for indulging me. You have had an impossible task and there are so many areas that we have not even touched on. It is a pity that we have such a limited amount of time. The idea of objections being considered frivolous or vexatious on the basis of their being annoying would not go down well with a lot of community objectors. However, I want to ask specifically about section 86.

I am concerned and surprised that the Executive has allowed section 86 to appear as it does. I may be wrong, and I will stand corrected, but it appears to me—Sheriff Principal Nicholson refers to this as well—that, for the first time, when anyone breaches an exclusion order, the licence holder of the premises will be given the power to remove that person from the premises. Even more important, the licence holder may, "if necessary for that purpose, use reasonable force."

It is hard enough to justify the use of reasonable force to prevent someone from getting in somewhere or to restrain someone until an officer of the law comes. Allowing reasonable force to be used to remove someone physically is opening up a Pandora’s box of major legal problems concerning what is or is not reasonable force.

It is also an unequal power. Some licence holders will not be capable of using reasonable force, whereas others will; therefore, it will be an unequally used piece of law. I am worried that, for the first time, we are providing a citizen other than an officer of the law with the power to use reasonable force against another citizen. I ask the Executive to reconsider that, as it is very troublesome.

Jacqueline Conlan: Thanks very much for making that point. Gordon Nicholson also made that point in his comments. We are happy to take that away and reconsider the section.

Paul Martin: What measures have been taken to improve police reporting to the licensing boards?

Jacqueline Conlan: Could you give me a bit more detail?

Paul Martin: It could be argued that the current format of the police reporting to licensing boards is insufficient, in terms of the kind of information that is provided to licensing boards. Are there any measures in the bill to improve the situation?

Jacqueline Conlan: The issue has not been raised with us. In general, the police have a good and close relationship with licensing boards. They attend board meetings and seem to be in fairly regular contact with them. If you give me more detail, I can take it away and consider the point.

Paul Martin: If, for example, 110 calls about an off-sales establishment were made to the police, would you expect that to be reported to the licensing board?

Jacqueline Conlan: By the police? Under the new system, we would expect—

Paul Martin: I mean under the existing system and the 1976 act. Would you expect the police to report that 110 calls were made by a local community that was concerned about activities in and around those premises?

Jacqueline Conlan: I am not sure that I am equipped to comment on what is happening at the moment. I would expect that, where there were persistent problems linked to specific licensed
premises, the licensing board would be made aware of that.

Paul Martin: I appreciate that, but I am asking about the current process by which the chief constable reports to the licensing board concerning new applications. Under current provision, in the 1976 act, if 110 calls have been made about an off-licence premises, any member of the public would expect that to be reported to the licensing board. However, current experience suggests that that information is not reported. Are there any measures in the bill to address the way in which Strathclyde police interact with the licensing board? However, current experience suggests that that information is not reported. Are there any measures in the bill to address the way in which Strathclyde police interact with the licensing board to provide a wide range of information? As it stands, the police may not be providing all the information concerning those licensed premises.

Jacqueline Conlan: There are two sets of issues: one about new applications; the other about on-going problems. As regards on-going problems, there would be a close relationship with the police, which would probably make itself known most through the relationship with the licensing standards officer. Under the new system, the police will certainly be at liberty to bring complaints.

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.

Paul Martin: That relates to the licence holder. I will give the example of an off-sales in Ruchazie in Glasgow to illustrate my point. On average, 50 youths congregate at, and are involved in antisocial behaviour around, those premises. Under the new provisions, would you expect the police to report that information to the licensing board?

Jacqueline Conlan: There are no specific provisions that give the police a statutory duty to report certain types of information. The bill provides routes for them to do that, but there is nothing in the bill that regulates the practice.

Paul Martin: Do you accept that the licence holder is not the only important element of the licence and that the operation of such premises in the communities in which they provide a service is important too?

Jacqueline Conlan: We obviously want to ensure that the new system means that when there is a problem with the operation of a premises, it can be tackled. The mechanisms for that are in the monitoring and enforcement regime that will be put in place. If there are issues that you want to raise that go beyond that, such as the arrangements for how the police will relate to the licensing board, we would need to look at that in more detail.

Paul Martin: You are happy to confirm that you will look at the format of the process by which the police will provide information to the licensing board.

Jacqueline Conlan: We would be happy to consider any information you provide, but it would be for the minister to decide whether he wanted to amend the bill or introduce additional provisions on that.

Margaret Smith: I want to ask about the role of chief constables. I may be wrong, but it seems to me from what we are being told that although chief constables have a right to be competent objectors to applications at the moment, under the bill they will no longer be able to object to an application, but may simply make a recommendation that is based on an assessment of the applicant’s convictions. Is that understanding correct? What does that mean?

Jacqueline Conlan: The bill incorporates the Nicholson committee’s recommendation that we should replicate the system that has been introduced in England and Wales. Nicholson said that that system is broadly acceptable and should be introduced in Scotland. That proposal is linked to the removal of the fit and proper person ground for rejecting a licence application. It has been suggested that that ground, which can be considered quite vague and subjective, has been overused. As the new system will be more transparent and will be set up on a more objective basis, it should be clearer for applicants and the police.

You are right that, under the new regime, the police will have the role of checking whether the applicant has had convictions for relevant offences and confirming that to the licensing board. We expect that a fairly wide list of relevant offences will be set out in regulations. If convictions were discovered, the police might also make comments to the licensing board about whether they felt that the licence should be granted. In addition, the police will have an on-going role, in that they will be able to make a complaint against a premises at any time, under any of the grounds that are set out.

Margaret Smith: So the police’s role does not relate just to the personal licence holder; they can report matters such as repeated problems with a premises to the licensing board at any time.

Jacqueline Conlan: Yes. There are two sides to the role of the police. There is the procedure that I have just explained, which relates to the
The Convener: That brings us to the end of our questions for the first panel of witnesses. I thank the four representatives of the Scottish Executive for what I think has been a very useful opening session. It continued for a little longer than we had originally scheduled, but it has helped the committee to understand the Executive’s perspective on a number of the issues and to highlight a number of issues on which members would like the Executive to return to the committee following further consideration. I am sure we will be dealing with you again over the months to come.

We will move straight on to the second panel. I welcome Sheriff Principal Gordon Nicholson to the committee. Your name has been much mentioned during the past hour and a half. The fact that you are giving evidence to the committee is very welcome, given your involvement in chairing the committee on liquor licensing law. The written notes that you have submitted in advance of today’s meeting have been very helpful in identifying areas where you think the bill is going in the right direction and in raising issues on which you think there is a need for revision during the Parliament’s scrutiny of the bill. Before we move on to questions, I will give you the opportunity to make some introductory remarks.

Sheriff Principal Gordon Nicholson (Committee on Liquor Licensing Law): Largely because I submitted a written paper, I had not intended to make any introductory remarks. However, over the past hour and a half I have been taking a few notes on some of the matters that have been raised and it might be helpful to give my view on what I think are some of the more important ones.

I see that Tommy Sheridan is no longer here, but I will respond to a point that he raised. I had never thought of this before but, speaking personally, I can see some advantage in a city the size of Glasgow deciding to divisionalise and set up a number of boards in different parts of the city. As Jacqueline Conlan said, that is a matter for the local authority. The bill certainly empowers councils to take such steps if they wish.

The second point that I would like to discuss concerns the size of licensing boards. A comparison was made—a little unfairly, I thought—between the proposal in the bill and the size of my committee. I and members of my committee saw a distinction arising out of boards’ two functions. 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 over-provision 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.

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.

In relation to access by children, my personal view, as I said to Jacqueline Conlan on the telephone just yesterday, 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—I hope you do not think that I am being in the least bit offensive, because I certainly do not mean to be—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. Under the existing legislation, there is no prohibition against children going into any of those places. In existing law, the only prohibition is against children going into bars—and it has to be said that the extent of that prohibition is not entirely clear. That is one reason why we thought that there needed to be a change, with some modernisation.

16:00

One has to have some provision that will enable the owner of the Balmoral Hotel on Princes Street, for example, to understand where he is starting from when it comes to setting out the details in his proposed operating plan. Is he starting out from a basis whereby he need not say that children will be able to have access to the public lounges, the restaurant, the bedrooms, the bathrooms and so
on? If he can take that for granted, he can concentrate on the details and say that they will not have access to the XYZ bar, the ABC bar or whichever other bits of the premises to which they will be denied access.

Whether one starts from a presumption in favour of access and then subtracts from it—the approach that we recommended—or starts from a presumption of no access, it is important that the bill says something about where that starting point will be.

On appeals, I stand by what I said in my submission. With the greatest of respect to Mr St Clair, I must say that I did not find his explanation convincing. It seems to me that allowing someone who in any sensible view has no proper interest in the subject matter in question to appeal once, but to stop them the second or third time on the ground that they would at that point be being either vexatious or frivolous, is not a good recommendation for legislation.

I simply renew my personal belief that, even if one has the wide, any-person approach that is in the bill at the moment, there should be some sort of geographical limitation, even if that limitation restricts the right to appeal to—and I suggest this off the top of my head—anyone who is resident or has a place of business in the area that is covered by the licensing board in question. That seems to be a fairly sensible way forward and, to pick up the point that Tommy Sheridan made, it would admit local residents groups and so on but exclude the teetotaller in Stornoway that I posited in my submission.

A point about the chief constable being an objector was raised. I have not had an opportunity to discuss the matter with Jacqueline Conlan; I hope she will forgive me for what I am about to say. I have a suspicion that the Nicholson report might have been slightly misunderstood—that might be our fault for not expressing ourselves clearly enough. One reason we suggested that chief constables and others who are linked to a local authority should be limited to a position wherein they are able to make representations and unable to raise objections—you might say that in any case there is very little difference between the two positions—is that we were concerned about certain human rights issues relating to the objectively perceived independence of the licensing board. That is one of the main reasons we recommended that local authorities should no longer be competent objectors or competent licence holders.

As I understand it, the legal advice that the Executive has received is that our concerns in this area are wrong. I do not agree with that, but there we are. As a result of those concerns, we thought that officials such as the chief constable or whoever should not have a formal right of objection but should be entitled to make submissions, observations or comments in some other way. Our recommendation had nothing to do with the removal of the old fit-and-proper-person test.

I had not realised until I heard a day or two ago roughly what Jacqueline Conlan said earlier that, as far as applications are concerned, the bill seeks to limit chief constables simply to making comments about convictions. I would have thought that a chief constable might have a perfectly proper, legitimate and important interest in a wider range of matters and that he should be capable of making his views on them known to a licensing board. As a result, I am a little alarmed if a chief constable’s role is to be constricted in such a way. If, as it appears, the Executive considers that this matter has no European convention on human rights implications, a chief constable should simply be treated as an objector.

I should add that this is simply a matter of statutory interpretation. I would have thought that, given that the reference in section 21(1) to “any person” who can make an objection or representation is restricted only by the “frivolous and vexatious” test in section 21(3), a court would perceive a chief constable as being “any person” for that purpose. If the intention is to include chief constables, the bill should say so.

I am sorry, convener. I went on a little longer than I intended to, but I thought that it would be helpful to give the committee my personal take on matters that have already been discussed.

The Convener: We welcome your response to some of the debate on the Executive’s introductory evidence; it has been useful.

Before I bring in my colleagues, I want to return to the issue of the local authority being a licence holder. I understand your concerns about local authority members making a decision on their own local authority’s application for a licence. However, the problem with excluding local authorities from applying for a licence is that many of them run sporting or leisure facilities such as municipal golf clubs, theatres and other premises that have a licensed element. Are you suggesting that for such facilities to continue, the local authority would need to franchise out the licensed element while still operating the sporting club, theatre or whatever?

Sheriff Principal Nicholson: The committee certainly considered that possibility. We looked into the matter because of our ECHR concerns and our concerns about whether the licensing board could be considered an impartial tribunal if it were able to grant a licence to that from whence it came. When we carried out a survey of the
position around the country, we discovered that some local authorities have no liquor licences; that some have only two or three; and that Glasgow City Council has the largest number—something like eight or nine. We are not talking about a massive number of licences.

We were a little surprised to find that Dundee does not have any licences. After making some inquiries, we found that that is not because Dundee does not have the kind of premises that you have just described but because the council has, for whatever reason, decided not to hold licences in its own name. Instead, it either franchises or rents out the licensed bar element of those premises to a tenant, who becomes the licensee. The information that we received from Dundee was that that arrangement does not present any particular problems. That said, I know that, notwithstanding questions of ECHR, our proposal did not go down well with a great many local authorities around the country.

Bruce Crawford: Thank you for coming along to the meeting and for being prepared to give evidence. Obviously, your committee has presented Scotland with an incredibly important piece of work and it is good to see that work coming to fruition today.

You have probably heard me beginning to tease out the issue of the abolition of permitted hours. One would expect organisations such as the SLTA to rub their hands with glee at the prospect of abolishing permitted hours and to consider that to be useful and acceptable, but it has argued that core operating hours must be available and guaranteed.

On page 2 of your submission—the paragraphs of which are not numbered—you state:

“I am not sure that the Bill at present makes it sufficiently clear that a Board can authorise opening hours other than those applied for where the Board considers that to be appropriate”.

I suppose that it is possible that a board could refuse a licensee permission to open during hours that are currently considered to be permitted opening hours and could, for example, remove the ability to open premises at 11 o’clock on a Saturday, for whatever reason. Currently, the SLTA knows that it can operate within the core hours. It is concerned that those hours might be eroded. What do you think about that?

Sheriff Principal Nicholson: I recognise that there is a theoretical risk and I suppose that, to a certain extent, we must do some crystal ball gazing. However, I should also make clear the committee’s concern that, although the current legislation provides for specified permitted hours—as you rightly say—the reality has been totally different for many years.

Members might know that Clayson recommended a power to extend permitted hours on the basis that such a power would be used very occasionally, for example to add an extra hour to closing times in holiday resorts for a couple of months during the summer. However, the use of extensions means that, currently, no hour of the day or night is technically out of bounds to be used as a licensed hour, which is why some places stay open until 4 in the morning. I gather that some pubs in Leith in Edinburgh open at 5 in the morning to cater for workers coming off shifts, for example.

Having legislation that appears to say one thing but works in quite a different way offended my sense of propriety. It is generally accepted that, subject to there being no problems with over-provision and so on, there are too few permitted hours and that permitted hours can reasonably be extended, as they currently are in city-centre pubs, for example. We thought that it would be sensible simply to accept the reality of the situation and to say that no hours should be out of bounds, but it will be up to local licensing boards to determine case by case which opening hours will be permitted.

The other side of the coin is interesting. Members might have seen or heard about what has happened recently in England. The provisions of the Licensing Act 2003 have not quite started to come into operation yet, but applications are being submitted by licence holders. Apparently, no pub has so far sought opening hours that are longer than its current opening hours, and I would be surprised if many licensed premises in Scotland—with the possible exception of 24-hour supermarkets, for example—sought longer hours than they currently have for selling alcohol, although I am gazing into the crystal ball that I mentioned a moment ago.

You mentioned the example of a licensing board in the Western Isles, which might say, “We don’t like licensed premises being open on a Sunday, so we won’t allow it.” I suspect that in such a situation those who rely heavily on the tourist trade would put pressure on the board to change its policy. On the other hand, if such a policy were truly reflective of the views of the community in that part of the country, the licensing board should have such a power.

16:15

Bruce Crawford: That is useful and reflects the reality of the situation. In your submission, on section 60, you acknowledge that an applicant could stipulate an opening period of 23 hours and 59 minutes, so the premises would in effect be open 24 hours.
Sheriff Principal Nicholson: That was really a point about drafting rather than policy. I have not had a response from the Executive. It might persuade me that I have misunderstood or got it wrong, but it seems to me that although the idea is, as I understand it, to create a kind of presumption against 24-hour opening—with which I would not quarrel—the bill will not achieve that, for the reasons that I set out in my submission.

Bruce Crawford: That is useful.

In your response to my first question, you mentioned over-provision. In your submission, you point out usefully that, in the 1976 act, over-provision is allowed as a ground for refusing an application, but has been given little or no constructive thought. Why do you think that is?

Sheriff Principal Nicholson: This is a purely personal view, but I think that it is because the bad, undesirable consequences of over-provision have crept up on us gradually over a good number of years. Some time ago I asked a licensing board chairman what his approach to over-provision was. He said that the matter was terribly difficult, because if a defined area already had 12 licensed premises, it was difficult to determine whether a 13th licensed premises would result in over-provision or whether that would be the case only once there were 14 or 15 licensed premises.

The matter has been clouded further by the increase in the number of large premises. I am thinking of Edinburgh and Glasgow—and, no doubt, elsewhere—where former banks have been converted into public houses that can accommodate 1,000 people. The addition of two such premises in an area that already has eight small pubs would be much more significant than the addition of two more small pubs would be. The consequences have crept up on us, which is one reason why perhaps not all but most licensing boards have never really grasped the nettle. There is also the problem that was raised earlier of defining what we mean by over-provision.

Bruce Crawford: I will give you an example of a licensing board trying to grapple with the issue. Members probably know Perth reasonably well. In St John Street, there are now a fair number of pavement cafes. There have always been many pubs in that part of Perth. When the pavement cafes first started applying to open licensed premises, all the objectors were neighbouring pubs operating in the area. Quite rightly, the licensing board said that it would not say that there was over-provision and would go ahead and allow the number of pubs to expand. Rather than going out of business, the existing pubs got busier, because the environment was improved and the owners invested more successfully in their businesses. There, the over-provision rules were not applied. I am a bit concerned that the over-provision rules might stop investment going into areas and bringing other premises up to the required standard. I do not know how much your committee considered that issue and whether such market regulation could have the effect of not allowing investment to come in.

Sheriff Principal Nicholson: That is certainly a risk. Another point that is germane is what we call in our report licensing by stealth. The situation has been touched on briefly this afternoon. For example, premises might be given a hotel licence under the existing law to which no special condition is attached. The licence is given in the knowledge that the hotel is a small one with 10 bedrooms and a small bar. What can happen—I can think of at least one instance, possibly more, of this happening in Edinburgh—is that the bar grows and grows and spills over in summer to outside tables and chairs. There can be 1,000 people drinking in premises that were originally granted a hotel licence when there was only a tiny bar. That kind of thing can also have an impact on over-provision. However one defines the word, one will have to consider the number of premises in a defined area, their size, their capacity, the type of premises and so on.

The Convener: I am aware that people in the area that I represent are less concerned about over-provision in the on-trade than they are about it in the off-trade. Off-licences can often dominate small towns and villages and push out other forms of business. Will the provisions on over-provision be used to help to stimulate local economies by ensuring that a particular type of premises, such as an off-licence, does not dominate an area?

Sheriff Principal Nicholson: What you say is perfectly possible in some areas, and that is why the approach is not so much board by board as locality by locality. The considerations in one place might be slightly different from those in another. As you rightly say, the arrangements and the number of premises in a certain locality can have a positive or a negative impact on the overall economy of the locality.

Paul Martin: Did your committee consider the social consequences of over-provision? There seems to have been a significant increase in the provision of licensed premises, particularly off-licences.

Sheriff Principal Nicholson: It is probably fair to say that our starting point was the adverse impact that over-provision can have on local communities. At one of our evidence sessions, a quite vocal residents group made it plain that it is important not to define any notion of locality too narrowly. The group made the perfectly valid point that there might be a reasonably definable locality that people might say has too many pubs and clubs, the impact of which can be felt at 4 in the
morning a couple of miles away, because that just happens to be the route that all the drunken ex-clubbers take on their way to get the local late-night bus. It was also made clear to us that the issue was not strictly within our terms of reference. I suppose that it is not within the terms of reference of the bill either.

There is also a question about infrastructure. We cannot consider licensing on its own; we must also consider when late-night takeaways are open, when they have to close and issues around the provision of public toilet facilities and public transport. Considering all those matters together with licensing could have an impact on the undesirable consequences that flow from having too many ill-regulated public houses and other licensed premises in one small area.

Paul Martin: So it is accepted that a majority of licensed premises, such as off-sales, will find themselves in deprived communities. If you were to compare Mearns Cross in Newton Mearns with Springburn Way, for example, you would see very different profiles. Is that something that your committee considered?

Sheriff Principal Nicholson: I do not think that we considered that specifically, but I would not quarrel with what you are saying. You are absolutely right.

The Convener: I will move on to issues around young people. You have set out clearly what you would like to be the case with regard to access to licensed premises by young people. You will have heard the committee asking the Executive a series of questions about sales to under-age people. You have commented that you believe that some aspects of sections 98 to 100 are inconsistent. Will you expand a little on your views in that regard?

Sheriff Principal Nicholson: As I think I commented in my submission, it is perfectly possible that I might not have understood the issue properly. Yesterday, Jacqueline Conlan—bless her—told me that she would be sending me a response to my comments, which would deal with the matter.

This might be my fault, but I did not really get a sense of what the desired policy was in those sections. I do not think that I can help you much more at this stage. If, following any response that I receive from Jacqueline Conlan, I have further thoughts on the matter, I might send a further note to the committee.

The Convener: I am sure that it would be useful if you could do so. I am sure that the Executive will copy the committee in on what it sends you on the issue.

Michael McMahon raised the question of services such as dial-a-drink, whereby people can phone up and order alcohol, which could be delivered to premises where only young people are present. Can the existing law deal with that situation? What measures need to be introduced to address that?

Another aspect is test purchasing, which we asked about earlier. Would it be possible to introduce that, given that the purchase of alcohol by a young person is a criminal offence? The situation is slightly different from the situation that applies to tobacco.

Sheriff Principal Nicholson: As far as dial-a-drink services are concerned, I found myself thinking earlier this afternoon that, in a situation where a delivery driver who is giving effect to an order placed by telephone arrives at a house and a young person answers the door and says, “Ah, you’ve brought my order,” or something like that, and there does not appear to be a responsible adult in the house—in other words, where it is not pure chance that a child has opened the door, and it was not the father who placed the order—there might be advantage in requiring the delivery driver to ask the person to prove their age and to say that, if they cannot, they will not hand over the order and will take it back to the shop, with the cost being reimbursed to the appropriate debit card or whatever.

Even if such a requirement were to be introduced, I dare say that there would still be circumstances in which it would be difficult for a delivery driver to be absolutely sure that the youngster who opened the door was the person who placed the order and was alone or in the company only of other youngsters—it might all have happened because the parents were out. Difficult situations could arise, which would have to be handled with care and which would probably be quite difficult to police.

Sales in licensed premises are rather easier to police. If a licensing standards officer is going around carrying out a routine check of premises and spots a youngish-looking person being sold a drink at on-licensed premises or off-licence premises without being asked to prove their identity, some measure of policing is desirable, but that is much more difficult to do at 10 o’clock at night on a suburban doorstep. In so far as it can be made practicable, there would be an advantage in extending the no-proof, no-sale policy to doorstep deliveries.

As Jacqueline Conlan said, test purchases would be a matter for the Lord Advocate. Any young people who were being used as the organs, if you like, for carrying out the test purchases would have to be given in advance a clear and categorical indication that there would be no question of their being prosecuted for carrying out the task. There remains a slight moral issue,
because, even if that were to be done, it is not inconceivable that some youngsters who were approached to do it, even with assurances that they would not be prosecuted, would not be comfortable with doing something contrary to the law. I have a slight anxiety on that front, which I suspect that the Lord Advocate might share.

16:30

Bruce Crawford: If it is difficult to deal with dial-a-drink services—you went through the complications—it will be equally difficult to deal with purchases over the internet, which, no doubt, will increase. In the circumstances, would it not be better just to ban those practices?

Sheriff Principal Nicholson: That is jolly difficult. I am sure that we have all seen increasing numbers of Sainsbury’s and Tesco vans on the roads during the day and in the evening, with drivers staggering out with boxes full of groceries—bread, sugar and, perhaps, half a dozen bottles of wine. Given that, as I understand it, that is a pretty commonplace way for many people to do their shopping, by doing what you suggest, we would be saying either that that kind of shopping must cease altogether or that people can carry on shopping for cornflakes and coffee, but must not order any alcoholic drink. That would be possible, but I sense that it would not be terribly popular.

Margaret Smith: Rather than banning the practice completely, a fairly reputable supermarket, such as Tesco, could make it a condition of sale that where alcohol is purchased online it must be received by someone aged over 18. The person purchasing the alcohol would enter into a contract; if it fell apart, the onus would be on

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Sheriff Principal Nicholson: I would not have a difficulty with that. I talked specifically about supermarkets, but it occurs to me that there are many wine societies and the like that operate entirely by mail order, either in the true sense or by taking orders over the telephone or internet. If one were to say that such businesses were no longer lawful, one would put many old, established organisations out of business overnight, which would not go down well.

I am a member of the Wine Society, which has its headquarters in Stevenage and from which I buy wine occasionally. It has an investment of millions of pounds in cellarage, storage and other such things. It would not be too happy if the Scottish Parliament passed a law that, although it would not initially affect its English customers, would deprive it of all its Scottish customers.

Dr Jackson: Is there evidence of how the issue has been addressed in other countries?

Sheriff Principal Nicholson: We did not receive any evidence on what happens in other countries. I will be frank—there is a former member of my committee in the public gallery who will perhaps tell me if I have got this wrong: I do not think that we considered the problem that has been discussed this afternoon, which is doorstep delivery, possibly to a child. We gave some consideration to internet sales, but that was in the context of the more technical problem of determining what the premises are for the purposes of a premises licence if the purchaser deals just with a website.

Dr Jackson: I was thinking of countries in which there are already stricter regimes for the sale of alcohol and how they might have overcome the internet problem.

Sheriff Principal Nicholson: I do not know. Officials in the Executive might have contacts whom they can get in touch with, although not necessarily formally, to get a feel for what happens elsewhere.

Mr Davidson: Recently, I received answers from the Scottish Executive to parliamentary questions on internet pharmacy. I was given an assurance that, as far as the Executive is concerned, all premises that operate as internet pharmacies will be subject to the same regulations as will traditional community pharmacies that hold a national health service dispensing contract. Do you feel that the area needs to be considered more closely and that the same regulations should be applied to all premises, as happens in the licensing of premises that dispense drugs, which are registered products? Is there a parallel?

Sheriff Principal Nicholson: When we were preparing our report, we were not persuaded that there is a problem in relation to the sale of alcohol over the internet, but we suggested that an eye should be kept on the situation. Section 130 makes provision for remote sales of alcohol and gives ministers the power to introduce whatever regulations might be required. The intention is to keep an eye on the situation and to take appropriate action as and when it is required.

One of the problems is that some people who operate as alcohol salesmen—wine reps, in particular—might not have premises at all. They might import directly from France, Germany, Spain or Italy, and any premises that they have might be no more than transitory storage premises from which the boxes are put on the back of a lorry and driven to Edinburgh, Glasgow, Aberdeen or wherever. Such businesses might be difficult to regulate within a framework that provides for premises licences, personal licence holders and so on. That is why it is important to include that on-going provision, under which ministers will be able to react as appropriate if it appears that there

Officials in the Executive might have contacts whom they can get in touch with, although not necessarily formally, to get a feel for what happens elsewhere.

Mr Davidson: Recently, I received answers from the Scottish Executive to parliamentary questions on internet pharmacy. I was given an assurance that, as far as the Executive is concerned, all premises that operate as internet pharmacies will be subject to the same regulations as will traditional community pharmacies that hold a national health service dispensing contract. Do you feel that the area needs to be considered more closely and that the same regulations should be applied to all premises, as happens in the licensing of premises that dispense drugs, which are registered products? Is there a parallel?

Sheriff Principal Nicholson: When we were preparing our report, we were not persuaded that there is a problem in relation to the sale of alcohol over the internet, but we suggested that an eye should be kept on the situation. Section 130 makes provision for remote sales of alcohol and gives ministers the power to introduce whatever regulations might be required. The intention is to keep an eye on the situation and to take appropriate action as and when it is required.

One of the problems is that some people who operate as alcohol salesmen—wine reps, in particular—might not have premises at all. They might import directly from France, Germany, Spain or Italy, and any premises that they have might be no more than transitory storage premises from which the boxes are put on the back of a lorry and driven to Edinburgh, Glasgow, Aberdeen or wherever. Such businesses might be difficult to regulate within a framework that provides for premises licences, personal licence holders and so on. That is why it is important to include that on-going provision, under which ministers will be able to react as appropriate if it appears that there
is an increase in one or other style of business and to make appropriate regulations.

Mr Davidson: As in many cases, the matter boils down to the unit cost of alcohol, which is also an issue for off-sales. People are becoming more astute about how to purchase volume on price. Is there a need to make such regulations to address that from the perspective of the various objectives that are set out in the bill—the promotion of public health, the protection of children and so on?

Sheriff Principal Nicholson: The situation is like the curate's egg: it is good in parts and bad in others. I fully recognise the undesirability of an off-sales place doing a big promotion on alcopops that are likely to be attractive to young people. That was mentioned earlier. On the other hand, I suspect—tell me if I am wrong—that if one wanted to buy a couple of bottles of whisky to put in the cupboard at home for the odd occasions on which one might want to have a whisky or entertain a friend, most of us would go along to the off-licence and scan the shelves, and, if we saw that Johnnie Walker was being offered at £3 a bottle less than Bell's because of a special promotion, we would buy the brand that was subject to the special promotion. I think that I am right in saying—although, again, I speak with no professional knowledge of this—that many of the promotions in off-licences are the work not of the shopkeeper, but of the big manufacturers and distributors.

Only the other day, I got a letter through the post from Bell's whisky, telling me that the company was delighted that I drank its product. I do not think that I have drunk its product for many years, but that is by the by. There were two vouchers enclosed, which entitled me to 50p off my next two bottles of Bell's whisky. It is a complicated area, as there are some promotions in off-sales that most reasonable people would not regard as being objectionable; by the same token, there are others that people might. I was quite encouraged by what Jacqueline Conlan said about the intention to keep an eye on the situation and to see to what extent some of the provisions in the bill could be applied to off-sales premises as well, without necessarily excluding all kinds of promotions and throwing everything out with the bath water.

The Convener: Let us move back on to our scheduled questions.

Margaret Smith: Bell's was obviously targeting you because it wanted a celebrity endorsement from a well-known spokesperson on alcohol issues.

In future, licensing boards will be required to recognise the views of the local licensing forums, which are to be set up by councils. The forums seem to be independent, but the bill does not seem to preclude representation on behalf of the council, as long as the same people are not on both bodies. Do you have any thoughts on that? More generally, do you believe that the bill, as drafted, allows the appropriate level of community involvement in the licensing process?

Sheriff Principal Nicholson: Broadly, it does, although I recognise the point that was made earlier by Tommy Sheridan that the limit on the total number of members of a local licensing forum may have a squeezing effect on the number of those members who can be said truly to represent local interests. The total number could, perhaps, be increased. The issue did not catch my eye when I read the bill.

Margaret Smith: Taking a percentage approach might be better than setting an absolute figure.

16:45

Sheriff Principal Nicholson: A percentage approach could allow the local representation element to be taken into account. We could say, for example, that not less than 25 per cent of the membership must represent the local interest. If boards operate with a maximum of 10 members, they might run into difficulties if there is not space for others who should be there—the chief constable and people whose functions relate to health, social work and so on. I am thinking aloud, but I wonder whether there might be an advantage in reconsidering the total. Paragraph 2 of schedule 2 says that the forums should be "not fewer than 5 and not more than 10", but perhaps that should read "not fewer than five and not more than 15". A lot may depend on the size of the licensing board area. That brings me back to the point that I made earlier when I was commenting on some of the other measures. I think that Tommy Sheridan was out of the room at the time. I said that I have sympathy for his suggestion that the licensing board in Glasgow should be divisionalised.

Tommy Sheridan: Good. I was going to ask you that question.

Sheriff Principal Nicholson: As I was saying when you were out of the room, divisionalisation is permissible under the bill. 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.

Margaret Smith: Is it important that the forum is independent from the licensing board?

Sheriff Principal Nicholson: Yes, it is important as a matter of principle. As the committee probably knows, even before the Nicholson report was published, there were local licensing forums in some parts of the country, albeit that they were set up informally. I think that I am right in saying that the Edinburgh licensing forum was chaired by the chairman of the local licensing board. As far as I understand, that arrangement worked well. Nonetheless, although it may work well in some instances, there can be no guarantee of it doing so in all areas, which is my reason for saying that, as a matter of principle, it is better that the forums are independent. Obviously, they should meet the licensing board fairly frequently.

Margaret Smith: In your paper, you say that you were surprised that the bill makes no mention of the national licensing forum, although you also say that you understand why the detail of the forum has to come in future. Do you stand by what you said? Is it reasonable to expect the national licensing forum to be mentioned on the face of the bill?

Sheriff Principal Nicholson: Yes. It would be helpful if the bill mentioned the national licensing forum, as that would put the bill’s other provisions in context.

Margaret Smith: I am addressing a school meeting on the subject of licensing tomorrow evening. Should I tell people that the bill will give the public a greater say in licensing decisions?

Sheriff Principal Nicholson: Yes. My view is that you can say that.

Margaret Smith: Thank you.

The Convener: You can mention that public endorsement, Margaret.

Tommy Sheridan: I would have preferred it if, instead of just saying yes to my suggestion, Gordon, you had said, “Yes, but the bill could be a lot better.” The truth of the matter is that it would not take much to improve on the current position.

I am sure that I speak on behalf of all members when I say that your paper was very helpful and that we appreciate it very much. I repeat the convener’s request that it would be great if we could get a copy of any response that you receive from the Executive. I for one would like to see what the Executive has to say in response to some of the detailed questions that you raised.

Sheriff Principal Nicholson: You will appreciate that that is a matter for the Executive, not for me. However, I am sure that its officials are listening to what you are saying.

Tommy Sheridan: I would appreciate it if you could find out whether it is okay to pass on any answers.

I want to ask a couple of general questions before I raise some specific points. In your inquiry and report, did you ever consider the question that I raised with the Executive of setting a policy objective on alcohol? Although the Executive has quite rightly made it a policy objective to encourage people to smoke less of the legal drug of tobacco, there is no policy objective to encourage people to drink less.

Secondly, did your committee consider the question of irresponsible promotion? The local off-licences that promote cheap alcopops are too far down the production chain and we should be targeting the principal problem of producers of cherry, cranberry or strawberry-flavoured vodka-laced drinks.

Finally, one of the biggest difficulties in Glasgow—I am sure that the situation is the same in Dundee, Edinburgh and Paisley—is that, because licensed premises generally close at about the same time, there is a mass exodus of revellers who are all looking to get home. The provision of transport is so inadequate that bottlenecks occur, which inevitably leads to conflict. Did the committee consider the question of transport in city centres, which, although it is not obviously associated with licensing, is directly related to some of those perceived problems?

Sheriff Principal Nicholson: The short answer to your questions—I will give you the longer answer in a moment—is the one that an Executive witness gave earlier. The bill is fundamentally concerned—as our committee was—with the licensing of premises and people trading in alcohol, although I have to say that we acknowledged that the way in which that is done has implications for public order, public health, local amenity and a range of other matters.

Because of that, when we worked out what we thought should be the licensing objectives—which are now enshrined in the bill—we felt that we could not specifically say that making people drink less should be a licensing objective. If we make that an objective for licensing premises, we will need to shorten licensing hours, never mind maintaining or even increasing them. I suspect that you will say that this is not the whole answer, but cutting the time that people are allowed to drink could have an impact on total consumption. Indeed, one could go further and introduce draconian laws under which a premises, licence
holder or person serving in a bar is entitled to serve no more than two drinks to any customer. All sorts of measures can be taken to cut down drinking.

The Executive’s approach—which I agree with—is that the bill must be seen as part of a wider picture. Licensing can do so much to persuade people to cut down their drinking; other measures to tackle that issue might be introduced, for example, by the Health Department or through educating children in schools. Our report tried to do what I think the bill is now doing, which is to provide a statutory licensing framework that will assist, not hinder, such initiatives. I believe that that is what we have achieved.

I agree entirely with what you say about alcoholic drinks that are cranberry flavoured and so on. They are plainly aimed at young people and are potentially dangerous if consumed in excess. The answer may be to pass a law that prohibits the people who manufacture such drinks from doing so. However, I do not think that the problem can be tackled purely through licensing premises. If the products in question are legal drinks that licensed premises are entitled to purchase wholesale and to sell on to their customers, licensing cannot stop that.

At the start of this session, when you were out of the room, I said that licensing is all part and parcel of public order. We touched on that briefly in our report, although the issue was technically outwith our terms of reference. Licensing cannot provide the complete answers: the whole infrastructure has to be reconsidered. You mentioned public transport, but we might also mention public toilets and late-night food outlets. A whole range of things must be considered together. They do not form part of licensing, but, in our report, we sent out a plea to all local authorities to get their heads down and to think seriously about how all those things can properly mesh together.

Tommy Sheridan: Thanks, Gordon. I will not dwell on the point, but the question arises: why should we have legislation relating to over-provision if we do not have an opinion about the need to reduce the consumption of alcohol overall? Specifically, the bill aims to reduce under-age drinking and drinking among young people. Why it does not have the wider population in mind is beyond me. I think that that is remiss.

I apologise for being out of the room when you made your opening comments. I had to use the toilet. Do you agree with the point that I made about the local element being artificial in places such as Glasgow, Edinburgh and, perhaps, Dundee? Under the bill, there could be three councillors on a board, who would make decisions that would affect the whole city. Given that we are talking about modernising the licensing system and giving a voice to communities, do you think that there is a window of opportunity to have more localised boards and forums that can feed into them, which would better reflect community wishes? My worry is that the provision is a sop and a way of ensuring only artificial local involvement.

Sheriff Principal Nicholson: As I said, I have no difficulty with what you propose. The bill, as drafted, largely repeats what is in the 1976 act and allows for a local authority area to be divided into divisions for the purpose of licensing boards. The schedule that deals with licensing forums makes it clear that, where that is done, each of those divisions will be considered a board area for the purpose of having its own local licensing forum. The mechanics are all there. Like you, I see some advantage in the larger cities taking that approach to reflect more properly and accurately local interests. What is relevant to the people on the east side of Glasgow may be quite different from what is relevant to people on the west side. However, I do not think that the Parliament will want to change the way that things stand. The Parliament cannot order councils to divide up into board areas; the councils have to make that decision themselves.

Tommy Sheridan: Surely the bill could require councils to consider localised areas—I am thinking aloud with my form of words here. Some Labour members might disagree with me on this, but, having been a councillor for 11 years, I worry that big councils such as Glasgow City Council tend to use certain positions as a form of patronage. If there are several boards rather than one big board, that might become more difficult. Would a change towards localised areas be legally possible?

17:00

Sheriff Principal Nicholson: I hesitate to offer a legal opinion to a committee of the Scottish Parliament. Speaking personally, I cannot see anything wrong with a piece of legislation that says that every local authority must, for instance, apply its mind every five years to the question whether the licensing board in its area should be divisionised.

I question the likelihood of that being effective. Local authorities that are against the idea of breaking up into divisions might perhaps hold a sham meeting lasting two minutes with a quick agreement to keep things as they are, following which councillors can say, “Right, that’s it: we’ve fulfilled our statutory duty.” My view, for what it is worth—and I say this with respect—is that people such as yourselves have to lobby councillors in Glasgow and put forward the case for what you think should apply.
Tommy Sheridan: With proportional representation on its way, I hope that such two-minute meetings will be a thing of the past.

Your paper refers to section 86, to which you will have heard me referring earlier. I also highlight section 122. As the exclusion orders covered by section 86 are specifically directed against people who have apparently either acted violently or threatened violence, do you agree that it could be troublesome—to say the least—to confer on a licence holder the power to use force to evict people from premises? Do you agree that those provisions must be revisited? I think that, as they stand, they would create problems.

Sheriff Principal Nicholson: I did not want to appear too dogmatic in what I wrote in my paper. Now that you have asked me the question, 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.

Michael McMahon: It sounds as if we are discussing the matter in a vacuum and that the type of situation that we are talking about does not currently occur. Currently, if a bouncer on a door ejects someone from the premises, the person ejected would have redress to the court if they felt that the bouncer had acted with undue force. What would change under the bill in relation to people getting evicted from premises?

Sheriff Principal Nicholson: The bouncer is doing something because it is part of his job. My concern lies in enshrining things in statute. I might be quite wrong about this, but it seems that what we are discussing now is not a million miles away from the discussion that has arisen in recent times largely from the Martin case—the case of the householder who shot somebody dead when his house was being burgled. A bit of discussion has been taking place, perhaps more south of the border than here, about whether there should be statutory authority for householders to use force if their house is invaded—members must have come across that debate. There is perhaps a hostage to fortune in relation to this debate, which goes slightly in the same direction.

Bruce Crawford: Currently, if a person uses inappropriate force to remove someone from a premises, they can be charged with assault. However, the reality is that, particularly in smaller pubs, publicans who police their pubs well and deal with trouble without needing to call the police have the best-run premises. If the bill is passed, there will be a danger that such publicans will no longer be able to police their own premises.

Sheriff Principal Nicholson: That might be. I agree that some of the best-run premises are the ones that never have to call the police.

Tommy Sheridan: In your paper, you raise concerns about section 122—

Sheriff Principal Nicholson: Are you talking about the provisions on appeals?

Tommy Sheridan: Yes, and about the sanctions that licensing boards could impose. When I was a member of Glasgow City Council, there were a number of occasions over the years on which a publican cocked a snook at the board's decision because the appeals process allowed their premises to remain open for extraordinary lengths of time. The board's decisions were ignored and communities thought, "What's the use of the power?" I want the bill to confer real power on boards to take action. You are concerned that a balance should be struck and you say:

"the immediate effect of a Board's decision could be given judicial scrutiny on an interim basis and pending disposal of the appeal by the sheriff principal."

However, I am worried about the practicality of such a procedure, which you compare with the procedure for interim liberation. I have had to appeal for interim liberation; I had to spend five days inside waiting for my appeal to be heard. In practice, would the courts be able to deal with such matters quickly enough to give boards the power that they need to act quickly, while allowing the licence holder to make a reasonable complaint if a point of fact or law had been wrongly presented?

Sheriff Principal Nicholson: I am hopeful that under the proposals, which I was pleased to hear are to be substantially revamped to reflect more closely the recommendations of the Nicholson report, appeals to the sheriff principal would be dealt with expeditiously—you will appreciate that I speak from 12 years' experience as a sheriff principal. I would think that a sheriff principal might be able to hear and decide an urgent appeal in the sort of case that you have been discussing within about six weeks. Currently, it commonly takes nine months for an appeal to be heard, so that would be a significant improvement.

As you rightly say, if a licensing board were to make an order that had the effect of immediate closure, a wait of just five weeks, during which time the premises would be closed, might be disastrous for some businesses. That is why we on the committee thought that it would be desirable to build into the system a procedure for a quick judicial decision, in which people could say:
“Does the appeal at least seem arguable rather than merely frivolous? Is there a reasonable case to make? If there is, we will keep the place open until the appeal is heard.” In the interests of speed, we suggested that an application for such a decision should be made to a sheriff rather than to a sheriff principal.

I will give an extreme example that occurred to us: the sheriff principal of Grampian, Highlands and Islands has a domain that stretches from the Western Isles up to Orkney and Shetland and down to Aberdeen and Stonehaven—with everything in between. If the licensing board in the Western Isles decided to close premises in Stornoway immediately and those premises appealed to the sheriff principal, the sheriff principal might at that time be engaged in court in a week-long case that he is hearing in Aberdeen or Inverness. For speed, we thought that an application should be made to a sheriff, so a publican in Stornoway could say to his local Stornoway sheriff court, “Please suspend this application should be made to a sheriff, so a publican in Stornoway could say to his local Stornoway sheriff court, “Please suspend this order of the licensing board temporarily while my appeal proceeds.” I will have to wait to see the finished product, but I think that such a line will be taken.

The Convener: I note the concerns in your submission about ECHR compliance and I note that the Executive believes that as long as the appeal process is ECHR compliant, it sees no difficulty in its proposals. If your interpretation were correct and a successful ECHR-based challenge could be launched, what would be the ramifications? Would that bring the whole act into default?

Sheriff Principal Nicholson: A challenge might do that. I accept fully that the case law from the European Court of Human Rights makes it plain that a deficiency in the impartiality of the judicial body at first instance can be overlooked when a right of appeal exists to a court that is undoubtedly impartial in the fullest sense. However, there is authority that says that, notwithstanding that, a duty exists to ensure that a court or quasi-judicial body at first instance is as close to objective impartiality as possible.

The introduction of new legislation provides the obvious opportunity to ensure that the quasi-judicial body at first instance—which is in this case the licensing board—is as close to being objectively impartial as possible. Therefore, I remain concerned if licensing boards, which are made up of councillors, are to be statutory objectors, able to hold licences in their own names and to consider all those matters, because I foresee problems.

I will give a simple example: a licensing board applies for a licence in its own name and a whole lot of local residents object, but their objection is overruled and the licence is granted. We are now told that the Executive wants to amend section 122 to entitle objectors to appeal. They might well appeal on the basis that the tribunal that took the decision was not independent or impartial.

You are thinking of a bit in the Scotland Act 1998, which my report mentions. Section 29(1) of that act says:

“An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.”

The section also says that legislation must comply with convention rights. That is the context for my concerns.

I do not claim to be 100 per cent right every time that I express a legal opinion. The number of times in my judicial history that the appeal court has overruled my judgments confirms that I am not infallible. The committee will no doubt be guided by the opinion that it receives from Executive officials. All that I can do is say that I have some doubts.

The Convener: I am sure that none of us round the table is infallible. You draw out an important concern on which the committee will have to satisfy itself fully before final consideration of the bill.

17:15

Michael McMahon: I asked a question earlier about the dial-a-drink service. The police officers who spoke to me about that had a legitimate concern about a specific issue. They were not talking about the threat of someone getting their bottle of Beaujolais from Wines of the World; they were seriously talking about young people getting a bottle of Buckfast from Winos-R-Us. My question was not intended to draw us into a wider discussion of the ordering of bottles of wine over the internet. Do you believe that the bill, as drafted, will give the police the powers to address that specific concern? Have you heard Scottish Executive officials saying that there is provision to curtail that type of activity between 12 o’clock and 6 o’clock? Will the police be able to enforce the provisions in the bill in respect of young people obtaining alcohol from an off-licence via the telephone?

Sheriff Principal Nicholson: I have not been through the bill with a fine-toothed comb—you will appreciate that I have not been as close to it as those in the Executive—and I do not think that I can give you a definitive answer to that question. However, I have no clear recollection of having seen anything in the bill that would immediately address the point that you touch on.

Michael McMahon: Would you be prepared to write back to the committee, once you have had a
look at the bill to see whether it addresses that concern?

Sheriff Principal Nicholson: Yes. I could have a look at the bill and let you have my view on the matter, if that would be helpful.

Michael McMahon: That would be worth while, as we are taking evidence from you on how the recommendations in your report are being implemented in the bill. I would certainly appreciate that.

I have a specific question about the role of the police in the proposed licensing process, concerning the fact that they will be restricted in what they can do. From practical experience and from having spoken to the police in my constituency, I am aware that a local licensing board was considering the issue of licences and was concerned about antisocial behaviour. The police were concerned that, although the motivation for addressing the licences was antisocial behaviour, the board never took the opportunity to consult the police about the effects of the granting of licences on antisocial behaviour. I take it that that issue will not be addressed in the bill, as there is no compulsion on licensing boards to seek information from the police, whether to allow the police to object to the granting of licences or to get the licensing boards to ask the police for advice.

Sheriff Principal Nicholson: That is probably correct. One hopes that, if chief constables were to be reinstated as objectors, a responsible chief constable would, of his own initiative, raise that kind of matter with the local licensing board. In any event, I think that the review provisions in the bill allow a chief constable, among others, to bring matters to the attention of the board in order to determine whether the board should intervene and impose some kind of sanctions on the licence holder. There is a role for the police in doing that.

Michael McMahon: In my experience, the police felt that it would be inappropriate for them to ask the local licensing board to ask them to provide information. They made themselves available and had an officer at the meeting of the board, but the board never availed itself of that information although it was making a decision about the granting of licences on the basis of the impact on antisocial behaviour. Is there some way of requiring the licensing board to seek that information from the police before making a decision? Perhaps the bill could include that requirement. Would it be beneficial to make that a requirement?

Sheriff Principal Nicholson: You must forgive me if, unlike Jacqueline Conlan, I do not have all the provisions of the bill at my fingertips. You are right that there is normally a police representative at a table just in front of the board members, and from my limited experience of attending licensing board meetings under the present system, almost invariably the chairman of the board will turn to the police representative at each application and say, "Inspector Smith, have you anything to say about this one?"

Michael McMahon: My experience might be particular to the licensing boards that I am thinking about. I had better stop asking questions about the subject.

Sheriff Principal Nicholson: My point is that if it is general practice—with one or two possible exceptions—for licensing boards to follow the kind of practice that I have seen, there might be no need to make that a requirement in the bill.

Paul Martin: I understand that the 1976 act requires the licensing board to provide the chief constable’s report, which means that the premises issue will be raised.

Were you disappointed by the response to your report from communities? I note that there do not seem to be community councils, residents organisations and many other organisations on your list of respondents. When the Executive introduced the bill, it raised concerns expressed by many of those organisations.

Sheriff Principal Nicholson: It is not entirely fair to do a head count of the respondents. Some of the residents associations that contacted us were vociferous and supplied us with a lot of helpful information. Some of them were indirectly represented on slightly different bodies. Appendix A to the report contains the list of consultees who responded in writing, which includes bodies such as Angus alcohol steering group. That group, as are many other such groups, is made up of a couple of local doctors, the local social worker, some local residents and a local policeman. They are representative of that sort of community. It is always nice when one feels that one is reaching out to the widest possible audience. I reckon that we did not do too badly.

Paul Martin: The reason why I raised the point is that Jacqueline Conlan said earlier that we have never had any complaints about how the police report to licensing boards. Michael McMahon made a similar point. That is not the case in some communities. People are concerned that, when they attend licensing board meetings, they are told that there is no police report when that is not representative of their experience. Their experience is of significant antisocial activity at particular premises that is not being reported to licensing boards. I raise that point because the bill seems to focus on the licence holder and whether they have criminal convictions, but community representatives are raising wider issues about the
kind of antisocial activity that surrounds the premises of the licence holder.

Sheriff Principal Nicholson: As you were speaking, it occurred to me that the issue is one that the local licensing forum might want to consider. If membership of the local licensing forum includes a police representative, the matter could be discussed from that perspective and from the other, different perspectives that are represented on the forum, after which the decision could be taken whether to pass the matter to the board.

Paul Martin: Does that not make the case for chief constables having a format for the way in which they provide information to a board? If the police have made 110 calls to a licensed premises, surely that warrants a report to the local licensing board? The report would say that that premises has had 100 visits and that there is concern about antisocial behaviour, not necessarily in the premises but in the surrounding area.

Sheriff Principal Nicholson: I understand that that sort of thing is possible under the bill.

Paul Martin: Because mention is made of location in the bill?

Sheriff Principal Nicholson: No, because of the application for review provisions in section 34. Section 34(1) says:

“Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.”

Although I may be wrong, my understanding is that any person, in the context of section 34, could include the police in the form of the chief constable. If a chief constable had received information that a particular premises was the subject of police call-outs five times a night, night after night, he would be entitled to bring the issue to the board and ask for a review of the licence.

Paul Martin: Surely that makes the case for a specific format that sets out the procedure for review of the licence? Such a format would not leave the decision to the discretion of the police authority but would make it clear that a full report of all activities surrounding those premises should be made. I am not saying that leaving matters to the discretion of an authority always means that the problem is not addressed. However, on occasions, the use of discretion has meant that problems were not reported to licensing boards.

Sheriff Principal Nicholson: If the committee were to go down that road, I foresee some licensing boards saying, “Oh my gosh, not that chief constable again. He is forever sending in notes about these tidily little things because the Licensing (Scotland) Act 2005 tells him to do so.”

Paul Martin: Surely 110 calls to the police—

The Convener: I think that you are getting into a debate with the witness, Paul.

Margaret Smith: I have a comment for the convener. We are going round in circles on the input that police officers make to licensing boards. Given that we are at the beginning of our evidence-taking process, a number of other witnesses are to come before us, some of whom will have the information that we need on the subject. We need a clear picture of the licensing boards at the present time and of police input to boards on an on-going, case-by-case basis as each application comes before a board.

We need a clear picture of what the situation will be after the bill is passed—if that is what happens—what the current issues are and what will happen in terms of the review process. Having had a couple of years on a licensing board in Edinburgh, my experience is exactly the same as that which Sheriff Principal Nicholson described. For every application that was brought before the board, the board chairperson would make a request to the police liaison officer asking whether the police wanted to comment on the application.

The comments that I heard in my time went from no-comment responses to screeds and screeds of information that detailed the number of call-outs, problems with bouncers ejecting people using unreasonable force and so on. Occasionally, the police would stand up and say that, although there had been problems with an establishment over the years, it was now well run as it had a new manager who was doing rather well.

The present system seems to give scope for the police to answer the sort of questions that we are raising on an on-going basis. I suggest that we seek clarification on the situation as it is at present, as it will be in future and at the point of review. We can also bear the issue in mind for our questioning of future witnesses, some of whom will have a lot more experience of the matter than I do.

Mr Davidson: Some of the comments that you made in your report were extremely interesting. Sheriff Principal Nicholson, I turn to your comments on section 7, which concerns the duty to assess over-provision. You mention “so-called ‘grandfather rights’”. Will you expand on that in light of the comments that Scottish Executive representatives made this afternoon? After the bill is passed—if that happens—and before regulations are made, will there be a need to set out clearly what is expected of licensees if they wish to pursue and continue their existing licence provision?
Sheriff Principal Nicholson: That would be helpful and appropriate. My concern, which might be ill founded, is that the focus that is given to over-provision by giving it a section to itself could have what many might consider to be an undesirable impact on existing licence holders. It depends on how the timescales work, but a licensing board might decide to work out whether there is over-provision in a designated locality and decide, by whatever yardstick it uses, that there unquestionably is over-provision in the area.

I would be concerned that, when such a board began to get applications from the existing licence holders for conversion to the new premises licence, it would say—because it has already decided that the area is over-provided—that it will have to cut down on the number of licences. If there were 20 licences in the locality, the board might decide to reduce that number to 15, so five licensees would simply be told, "Sorry, chum. You've been in business here for the past 35 years, but enough is enough and you're not going to get a new licence to enable you to continue." I might be imagining problems that do not exist and I would be more than happy to be told that that would not happen, but I am a little anxious that the section on over-provision might give at least some boards the impression that addressing that was expected of them. It would certainly be desirable for appropriate guidance to be provided, by whatever means, well enough in advance.

Mr Davidson: Do you envisage it being a case of business as usual under the bill, provided that licences are reviewed and premises examined and inspected by the new licensing officers, perhaps with police input? Is that a possible way forward or ought the bill to include specific recommendations from the Scottish Executive, which introduced the bill, to ensure that the new regime does not sneak up on licensees and that we do not face a series of advance appeals, which would take up a lot of court time and prevent the bill from progressing?

Sheriff Principal Nicholson: To put it broadly, it is desirable that there should be as much advance information and co-operation as possible during the transitional process to try to make it run as smoothly as possible and, if it is not contrary to the Executive's policy, to reassure existing licence holders that, although it is possible that the terms of their licences might vary upon transfer to the new system, they will certainly be entitled to retain their licences.

Mr Davidson: Subject to what?

Sheriff Principal Nicholson: Subject to coming up with an acceptable operating plan.

Mr Davidson: As the bill is worded, is there a serious risk of advance appeals being made or other advance action being taken through the courts to establish those rights or is that being overplayed?

Sheriff Principal Nicholson: It is a little premature for such actions. After all, the bill has been on the table for only a couple of weeks and it is perfectly plain from what we heard this afternoon that the Executive is continually refining and reviewing its policies, which is only to be expected. I suppose that it comes down to this: whichever direction the policy is to take, the sooner it is made clear and final, the better. Everyone will then know where they stand.

Mr Davidson: Are you content that due attention was paid to the Nicholson committee's recommendations on private clubs?

Sheriff Principal Nicholson: Yes, I think so. I am sure that you realise that we thought it quite anomalous that one group of premises that sell drink should be completely outwith the normal licensing process. We thought that there was no particularly sound argument for allowing clubs to retain that special, almost privileged, position. However, at the same time, we acknowledged that clubs have a character that is very different from that of ordinary commercial licensed premises and we were anxious that that difference should be recognised as appropriate in the bill. As far as I can tell, the bill seems to do that.

Mr Davidson: Were the comments on exemptions for small clubs that we heard today from Executive officials reasonable?

Sheriff Principal Nicholson: Yes. The comments were helpful and appropriate.

The Convener: That concludes questions for the witness. Thank you for the evidence that you submitted in advance and for your evidence today.

I welcome our final panel of witnesses, who are led by Peter Daniels, who was the chair of the working group on off-sales in the community. He is joined by Superintendent George Clelland, from Strathclyde police, who was a member of the working group, and Tony Rednall, from the Scottish Executive Justice Department, which provided the secretariat for the working group. I apologise for the fact that this part of the meeting is starting a little later than anticipated, but I am sure that the witnesses understand that much of the questioning has been of great relevance to our consideration of the bill. Before we ask questions, I invite Peter Daniels to make introductory remarks about the bill and the working group.

Peter Daniels (Working Group on Off-sales in the Community): I will make a few remarks and provide some background. When the working group was meeting, I was chief executive of East Renfrewshire Council. I retired from that position in...
September and I am now employed part time as Her Majesty’s lay inspector of constabulary for Scotland, a post that I will hold for three years. George Clelland has been in charge of licensing in Strathclyde police for the past two years and will move on from that role on Thursday. Tony Rednall is an Executive official and was the assistant secretary of the working group.

I will explain how the working group went about its business. We were appointed on 2 September 2003, but our first meeting did not take place until the end of September. We were asked to produce a report before the end of that year and we delivered our report to Cathy Jamieson on Christmas eve—the report made a nice Christmas present for the minister, although for us it meant three months of intensive work. We would have liked to explore some of the issues discussed in the report in more detail, but time did not permit that. For example, we were not able to say much about irresponsible promotions and did not touch at all on the issue of over-provision. That issue was raised by the Executive on the day that our report was published—2 February 2004.

The report indicates that our committee was in broad agreement with the proposed licensing system envisaged by the Nicholson committee. We certainly support the statement of the Minister for Justice that there was little or no argument for premises routinely to sell alcohol throughout the day and night. In our report, we made 30 recommendations. Fifteen of those related to the first half of our remit, which concerned better engagement and consultation at community level. The other 15 related to management and enforcement mechanisms—helping to prevent off-licences from becoming a focus of antisocial behaviour.

Of the 30 recommendations that we made, two do not apply to the bill. The first concerned the need to have antisocial behaviour units in local authorities and the second was a request to chief constables to give priority to policing arrangements in respect of off-sales. It is reasonable that the bill does not address those recommendations. We also recommended that it should be possible to submit objections

“by hand, post, fax or e-mail”,

but the bill refers to objections being made “in writing”. We are not sure whether the bill covers our point entirely. However, we are very pleased that all our other recommendations have been taken on board, either in the bill or in the proposed regulations. In one or two cases, the bill has gone further than our recommendations.

The Convener: I asked Sheriff Principal Nicholson about the criteria for an objector. I understand that your group recommended that an objector should be someone

“who can demonstrate a real and material interest”.

Sheriff Principal Nicholson expressed concern about the fact that the criteria have been broadened and that there is no geographical limit on where an objector can come from. Would you like to comment on the broadening out of the criteria?

Peter Daniels: We were concerned to ensure that the criteria were as broad as possible. The bill goes further than we went, because we were in favour of defining an objector as someone with a real and material interest, which might be difficult to determine. Regardless of whether we use the term “real and material interest” or say that an objection or representation that has been made on “frivolous or vexatious” grounds should be rejected, the criteria will be tested by the building up of case law. If the test were that an objector should have a “real and material interest”, it is probable that the national licensing forum would still have to produce guidance on how such an interest should be defined. Similarly, the forum will probably have to give careful thought to what may constitute a “frivolous or vexatious” objection or representation. It does not cause me too many problems that the Executive has departed from our recommendation and suggested instead that the licensing board should reject “frivolous or vexatious” representations or objections.

17:45

Mr Davidson: Licensing standards officers will have a crucial role. Should they be independent of any other authority, or should they be subject to the control of the licensing board? What powers should they have, and how should they be funded?

Peter Daniels: In our report, we said that licensing standards officers should have an educational and mediation role in addition to their monitoring role. We are pleased that section 14 sets out that those should be the three roles of LSOs. LSOs will provide information and guidance on the operation of the act. They will also provide a mediation service to try to avoid or resolve disputes or disagreements. The bill defines the role of LSOs very much in the way that we thought that it should.

We have also commented on the need for the national licensing forum to produce a job description and specification to a national template. Section 13 gives ministers the power to prescribe the qualifications and experience required; the national licensing forum will consider the job description. Again, the bill’s provisions largely agree with how we thought that LSOs should operate.

The Nicholson report suggested that LSOs should be employed by the licensing board.
However, licensing boards do not employ staff; the local authority is the employer. It would be difficult to imagine LSOs being employed by anyone other than the local authority. That is not to say that LSOs will not have a degree of independence in their job—just as local authority planning enforcement officers or environmental health officers have a degree of independence. LSOs will have that category of regulatory role.

Mr Davidson: People who have a disagreement with LSOs, or who feel that LSOs have overstepped the mark or been too inquisitive, might want to appeal. Who will provide independent scrutiny of the role and performance of LSOs? Should it be the national licensing forum, or a division of a Scottish Executive department?

Peter Daniels: There will be scrutiny, or appraisal, of an LSO through a local authority’s performance review and development schemes. Just about every local authority in Scotland has a staff appraisal scheme to measure how well people have achieved their objectives. Line managers within local authorities will monitor and scrutinise each person’s role.

Providing guidance on how the performance of LSOs’ statutory roles should be measured is probably another task for the national licensing forum.

Mr Davidson: How should complaints about LSOs’ performance be dealt with?

Peter Daniels: Complaints will clearly form part of the process. I presume that line managers will have to take account of complaints against an individual officer as part of their appraisal.

The Convener: David Davidson asked about the financing of licensing standards officers. Will you comment on that? I accept that the licensing board would not employ LSOs directly—they would be employed by the local authority—but should the board offer LSOs direction or guidance on enforcement measures?

Peter Daniels: The licensing board will have to produce a policy statement for its area and the LSOs will operate within that policy. There will be policy guidance, stemming from the statement that the board will be statutorily obliged to produce. 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. 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.

The Convener: You say that the Executive should pick up the bill. Alternatively, the fee structure could provide the finance for LSOs. Would that be preferable to the public purse picking up the bill?

Peter Daniels: When the group talked about that idea, the licensed trade representatives were against it on the grounds that the fee hike would be too much. I do not have evidence one way or the other. I would need to see the Executive’s work on that before I could pass comment.

Bruce Crawford: To tease that point out a bit further, would the application of a fee through the licensing system to pay for LSOs be any different from a local authority taking money for planning applications and using it to fund its work in that area?

Peter Daniels: That is a fair point. I would not necessarily disagree. To use an old-fashioned term, this is what local authorities would describe as a burden, and a burden needs to be paid for. I have no view one way or the other on whether it should be paid for through the fee or by the Executive.

Mr Davidson: Most of us would accept that it is a burden. Tom McCabe, the Minister for Finance and Public Service Reform, has commented recently about the need for duties to be shared across council boundaries as a means of cost saving and efficiency. Did the group consider the possible regionalisation of such services? The 43 licensed premises in your authority might not warrant a full-time officer. As a former councillor in Stirling, I know well the methods that we were trying to develop to share costs and facilities with Clackmannanshire and Falkirk and I am sure that that approach is common to all parts of Scotland. Is there a view about the efficiency of the service from that perspective?

Peter Daniels: We did not address that specifically but, as you will know, local authorities work together in a variety of areas. If a small council felt that the cost of employing a full-time LSO was not justifiable because of the small number of premises, I am sure that there would be no barrier to its co-operating with a neighbouring authority. The only problem might be that I think the bill requires each council to employ an LSO. I do not know whether councils could get round that provision by offering a shared post. Dog wardens, for example, are normally employed across a range of authorities. There are many such shared posts in local government.

Mr Davidson: Does Superintendent Clelland have a view on sharing licensing standards officers across police authority boundaries?
**Superintendent George Clelland (Working Group on Off-sales in the Community):** It would certainly be possible to share licensing standards officers under appropriate circumstances. For East Renfrewshire, which was Peter Daniels’s authority, the obvious neighbour would be Glasgow, which will need to employ a considerable number of officers, so that might be a one-off instance in which it would not be necessary to employ a full-time officer. However, that would be the exception rather than the rule.

**Paul Martin:** How does Peter Daniels envisage that local licensing forums would work? We touched on the matter earlier and it was suggested that they could be regional forums.

**Peter Daniels:** Our concern was to ensure that the proposed local licensing forums are independent of the council, which is necessary if they are to offer independent, objective views and advice to licensing boards on the matters that fall within their remit. The approach to setting up the forums, which is set out in section 10 and schedule 2, is good and covers the issues well. A council will have to establish and support a forum in an approach that will be very similar to the approach to community councils. Under the Local Government (Scotland) Act 1973, councils must establish a community council and provide it with administrative support, but beyond that the community council is independent. There are many examples of bodies that councils set up to operate at arm’s length from the authority. We are happy with the bill in that context.

The way in which the composition of local licensing forums is regulated under schedule 2 will probably ensure that councils cannot dominate a local licensing forum. We are generally happy with the provisions.

**Paul Martin:** Do you have a view on the membership of the forums?

**Peter Daniels:** No. Paragraph 2(5) of schedule 2 provides that a forum’s membership could include

“(a) holders of premises licences and personal licences,
(b) the chief constable for the police area in which the Forum’s area is situated,
(c) persons having functions relating to health, education or social work,
(d) young people,
(e) persons resident within the Forum’s area.”

Those are the kinds of people that we would expect to be included.

**Paul Martin:** I asked Sheriff Principal Nicholson about the evidence that he heard in relation to the notices that chief constables will provide to licensing boards. Perhaps Superintendent Clelland can clarify the matter.

**Superintendent Clelland:** I listened to the discussion with great interest. My job at Strathclyde police involves being the chief constable’s representative at Glasgow City Council licensing board. 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.

I listened to the discussion about the occasion on which information from the chief constable was not heard. I do not know what happened in that case. It is certainly not what happens in Glasgow and it is not my experience of the process.

18:00

**Paul Martin:** If 100 calls are made by members of the community about antisocial activity immediately outside licensed premises, should that be reported to the licensing board? There seems to be a myth that such things are not relevant to the licensing board and should not be reported to it. However, local people would hope that, if the police are frequently called out to deal with antisocial behaviour at particular licensed premises—not necessarily because the licence holder has criminal convictions—that behaviour should be reported.

**Superintendent Clelland:** I do not know the particular case that you are referring to. Normally, I would have thought that such information would be brought to the licensing board’s attention in some way. In Strathclyde police, the division concerned would gather the information and convey it to me. The information would then be brought to the board’s attention at an appropriate stage, whenever that may be. A difficulty that sometimes arises is in attributing particular behaviour—antisocial behaviour in the case you describe—to the presence of particular licensed...
premises. Disputes can arise over who can be held responsible for general behaviour in an area.

Paul Martin: A newsagent would probably attract less antisocial behaviour than licensed premises. We have to clarify what should be reported to the licensing board and what should not. There seems to be a myth that we cannot report antisocial behaviour outside licensed premises because that behaviour is nothing to do with the licence holder.

Superintendent Clelland: I agree with where you are coming from. Somebody can be the best licence holder in the world but, if the premises attract antisocial behaviour, the community would clearly be concerned and appropriate action should be taken.

Margaret Smith: Earlier, Mr Daniels touched on irresponsible promotions and said that his working group had not done much work on that issue. Should the bill cover off-sales as well as on-sales? The Executive has said that it will do further research on that.

Peter Daniels: It was a pity that we were not able to consider the issue. Paragraphs 7 and 8 of schedule 3 to the bill deal with irresponsible drinks promotions. As we heard earlier, those provisions will apply only to the on-trade. However, it is encouraging that ministers will be able to modify the list so that any promotions by off-licences can be tackled.

I cannot really comment on whether there is sufficient or insufficient evidence to link the off-trade to irresponsible promotions. We did not consider that and ministers obviously feel that the evidence is insufficient to make the link. We are encouraged that research into off-sales is continuing and that the Executive will consult the off-trade and Alcohol Focus Scotland.

Margaret Smith: Earlier, we talked about various schemes and about the role both of small off-sales premises and of the larger supermarkets. Many people bulk buy because of drinks promotions. Did you have input from people who were concerned about the supermarkets’ role?

Peter Daniels: In the working group, the licensed trade and retail sector members debated that issue. The licensed trade was concerned about people’s ability to access alcohol freely in a supermarket, to carry it outside the supermarket and to engage in antisocial activities. We did not reach a conclusion, because we could not consider the matter in sufficient detail, as I said. I think that George Clelland would agree that tension existed between the retail sector and licensed trade representatives on the group.

Margaret Smith: Do you have views on additional measures that could be considered to address concerns about a lack of controls on off-sales premises and supermarkets?

Peter Daniels: I have nothing specific. The bill focuses on matters such as deep price discounting and happy hours, which will not be allowed because of the 48-hour requirement.

As for off-licences, we are talking about a product that is a legal commodity. In a lateral thinking mode, we briefly considered whether we could ask a corner shop or other retail establishment not to sell alcohol, for which the compensation might be a reduction in business rates. That is lateral thinking and is probably off the wall. Our view was that the reduction in business rates would not compensate for the loss of income from not selling alcohol, so we did not take that proposal much further. The working group did not consider such a scheme in detail.

Mr Davidson: Aberdeen City Council recently attempted to establish a minimum pricing scheme for the on-trade. Did the working group take a view on that scheme, which was overturned in the courts? If such a scheme was national, how might it apply to off-sales?

Peter Daniels: The point is that the scheme was overturned in court. The court took the view that Aberdeen City Council had acted ultra vires—beyond its powers. Perth and Kinross Council also had such a scheme, but the price that Perth and Kinross licensing board set was much lower than the price in Aberdeen and I am not sure whether the matter has been followed up with legal action.

Mr Davidson: The bill proposes a 48-hour pricing system for on-sales. Did your group consider a minimum period for holding a price in off-sales? I am thinking of larger supermarkets, in which a profit mix subsidises some lines.

Peter Daniels: I am afraid that we did not go into such detail.

The Convener: I am led to believe that the Perth and Kinross experiment has been dropped.

Bruce Crawford: It has.

The Convener: One concern about happy hours and other such promotions is that they encourage binge drinking, because products are cheaper for a certain time. Given that most binge drinking among young people—under-18s—is of products that are bought in off-licences and supermarkets, do you believe that substantial price discounting in off-licences contributes to binge drinking among young people and possibly older people? Is there not a reasonable argument that that could be the case and should we consider measures to try to curb that behaviour?

Peter Daniels: There is a reasonable case, but the issue is whether any action that you can take
might fall foul of competition legislation. That might be a problem, but the Executive would need to be asked about that.  

**Michael McMahon:** We have heard discussion this afternoon about the policy objectives of the bill, one of which is to cut the amount of under-age drinking. Will the bill achieve the aims on under-age drinking that you set out in your report and address the concerns that you raised on it?  

**Peter Daniels:** It will help. The working group was very strong on the proof-of-age scheme and we are pleased that our recommendations for the documentation that would be accepted as proof of age are in the bill. We were attracted by the idea of using the Young Scot card and I think that the Executive wants to consider that as well as other schemes. When proof-of-age schemes are in operation, they will help to tackle under-age drinking, but the bill will not solve the problem, because we have a culture of it in Scotland, which will take a long time to change. However, the bill is certainly a help.  

**Michael McMahon:** Young people are innovative in the ways that they obtain alcohol. You probably heard the debate that we had earlier about the dial-a-drink service. What are your comments about the practical difficulties of dealing with that?  

**Superintendent Clelland:** I share the concerns that other police officers expressed to you about the dial-a-drink service. I cannot for the life of me understand why those who deliver alcohol are not required to ask for proof of age from the person to whom they deliver it. That seems fundamental to me. If proof is to be asked for when someone goes into a shop, why will it not be asked for when drink is delivered? However, that would still be a difficult area to police, because, even if the person who receives the alcohol at the house is over 18, they could pass it on to others and they would be in a house to which nobody would have a right of access. The bill should state that the requirement for proof of age extends to the dial-a-drink service, but it must also be recognised that the privacy of the house raises issues.  

**Michael McMahon:** There are practical difficulties with dealing with off-sales in licensed premises, so a difficulty or practical problem with requesting proof of age in deliveries to a home is no excuse not to propose provisions to deal with it.  

**Superintendent Clelland:** Another major difficulty for policing off-sales is agency purchase, which is when an adult goes into an off-licence, buys alcohol for young people and passes it to them. The licence holder might not be aware that the alcohol is for younger people. Again, however, the fact that that situation poses difficulties does not mean that we should not try to police it properly, focus on trying to detect people who purchase on behalf of others and introduce sufficient legislative deterrents that work against their doing it in the first place. That is the only way in which we can prevent someone from purchasing alcohol for young people.  

**The Convener:** Is it practical to introduce test purchasing, given that the purchase of alcohol by someone under 18 is an offence? I do not know whether you covered that in your previous answer, because I was having a brief chat with the deputy convener.  

**Superintendent Clelland:** Perhaps Peter Daniels will speak first.
public know that 80 per cent to 90 per cent of the big stores that were caught in the trial—the figure was 90 per cent in East Renfrewshire—were prepared to break the law, albeit unknowingly and unwittingly on the part of the salesperson. That is another issue related to training.

Superintendent Clelland: My force—Strathclyde police—supports what we called an integrity-testing regime, which is similar to test purchasing, but with a few specific differences. Some of the initiatives with which we were involved had 16 or 17-year-olds going into off-sales premises with no money in their possession, which meant that they could not have made the purchase. When it was established that a purchase would be made, however, a guiding officer was within eyesight to whom they signalled to come and inform the licence holder or shop assistant what was going on. In that way, it was established that the salesperson was willing to make a sale.

There was never to be a system of reporting such matters as criminal offences. We thought that that balance prevented a young person from properly committing the offence and so protected them from giving evidence in court. However, it gave the required information so that licensing boards could issue proper warnings or, if it came to it, take more severe sanctions against particular licence holders.

That is the position of Strathclyde police. In policing terms, the position throughout Scotland varies slightly. Some forces do not have the same issues as others. That will be the subject of discussion with ACPOS. However, the police service is generally supportive of such an initiative, provided that the correct protective mechanisms for young people are in place.

Bruce Crawford: That is useful. I am glad to hear that that conversation is on-going.

To try to prevent under-age sales, have you considered having designated tills for alcohol and other goods, particularly in the big supermarkets? Every time that alcohol was being sold to a person of any age, the individual would be asked whether the alcohol was being bought for selling to, or giving to, young people. There would be a check mechanism at each till. It would be similar to turning up at an airport and being asked whether you have packed your own bag.

Peter Daniels: I am trying to recall the discussion that we had about that, although I do not know whether it was in such explicit terms.

Tony Rednall (Working Group on Off-sales in the Community): We discussed whether there should be a separate till for alcohol, similar to the separate till for cigarettes that is found in many supermarkets.

Bruce Crawford: A separate till would cause difficulties because of the cost to supermarkets of reconfiguring their stores. People who were buying alcohol would need to get their biscuits at a different till. However, there is no reason why there could not be designated tills for alcohol and other goods. Every individual who was buying alcohol would be asked about their purchase. Would that help?

Peter Daniels: Yes. Although that idea has not found its way into the report, we discussed it and thought that it would help.

Bruce Crawford: That is good to hear. I will come back to that point with other witnesses.

The other issue that I wanted to raise is opening hours. We cannot control the price, because of competitive issues. However, we already have restricted opening hours on a Sunday morning. The Nicholson report and the Daniels report differed slightly on this issue. If I have got this right, Nicholson suggested that opening hours could be increased and that perhaps some 24-hour supermarkets could even sell alcohol, whereas the Executive, in the Daniels report, considered a more restrictive process. Most problems in relation to the purchase of alcohol by or for young people occur over a weekend, except during the summer months, when the schools are on holiday. Has any thought been given to restricting alcohol sales from Friday lunch time until Sunday lunch time?

Peter Daniels: We did not consider that specifically, because we supported the basic principle of Nicholson that decisions on opening hours should be left to the boards. The decision that is taken by each board will depend on the circumstances in its area. What might be applicable in East Renfrewshire might not be applicable in Glasgow, just a few miles across the border. 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.

Bruce Crawford: The only evidence that we have about how much alcohol is being sold in supermarkets, particularly to young people, comes from the pilots that you are talking about. My guess is that, whether the evidence was from East Renfrewshire, Paisley or Fife, the figures alarmed everybody. We can safely say that alcohol is being sold to under-18s in supermarket outlets throughout the country, in a way that was never envisaged. Given that that seems to be the national picture, would it not be wise to reduce the
number of hours in which supermarkets can sell alcohol, until the supermarkets prove that they can control the problem?

Peter Daniels: It comes down to the trust that we put in the local scene and local bodies such as licensing boards and local authorities. As you would expect, as an ex-council chief executive I am very much in favour of decisions being taken at as local a level as possible. My preference is to stick with Nicholson.

Bruce Crawford: I can understand that. I presume that “Responsible Retailing of Alcohol: Guidance for the Off-Trade” will, at some stage, be cited to us by the retailers who produced it. The guidance goes through a checklist of things that are supposed to be done to ensure that sales are not made to under-18s, but it is not worth the paper that it is written on, because such sales are still happening. We need to have a more aggressive policy, nationally or locally, to ensure that sales to under-18s do not happen. I will return to that issue when the minister is here.

Tommy Sheridan: I do not want to go over all the ground that you have covered in relation to test purchasing, but do you not think that there is a distinct lack of urgency? You stated in your report that there were 905 licensing offences in 2001 but only 100 convictions. Even then, we all know from anecdotal evidence that those figures are the tip of the iceberg. Is it not the case that outlets will continue to flout the law, because they think they will get away with it and because the penalties are so small that it is worth it from a profit point of view?

Peter Daniels: I take that point on board. As chairman of the group, I hope that a decision will be reached by ministers sooner rather than later.

Tommy Sheridan: I envisage a number of practical difficulties in relation to the purchasing scheme that was mentioned. I would like offending sellers to hand over the goods and provide a receipt. That would be a better way of getting somebody than calling them over and having a debate with them, and then having them say, “Oh no, I wasn’t going to sell it anyway.” Would it not be easier for the Lord Advocate to simply exempt the young persons who are involved in authorised test purchasing schemes?

Superintendent Clelland: I agree. The scheme was put in place to comply with the Lord Advocate’s requirements. I support an exemption of the nature that you describe. Test purchasing is an excellent policing tool that can be used, under appropriate circumstances, to obtain evidence of licence holders not running their premises properly and to make appropriate reports to either the procurator fiscal or the licensing boards, depending on the circumstances. I support your suggestion but, unfortunately, not every police officer has the same opinion. However, Strathclyde police supports test purchasing.

Tommy Sheridan: I take it that the figure of 905 licensing offences in 2001 represents reports that were made to the procurator fiscal.

Superintendent Clelland: I presume so.

Tommy Sheridan: The fact that there were only 100 convictions shows that the conviction rate was very low, despite reports being made.

Superintendent Clelland: Indeed. Many reports might have resulted in non-court disposals—either warning letters or other disposals—or perhaps no proceedings were taken.

Tommy Sheridan: I apologise because I had to use the loo when Peter Daniels made some of his points earlier, but did I hear him say something about the number of licensed premises in East Renfrewshire when he was chief executive?

Peter Daniels: Yes. The number was very small.

Tommy Sheridan: Did you say it was 43?

Peter Daniels: Yes.

Tommy Sheridan: Given your local authority background, I will pursue with you the point that I tried to make to the Executive witnesses. My worry is that the bill will not help the voice of communities to be heard in a city such as Glasgow.

Your paper shows that, if all licences are taken into account, there were about 10,800 on-sale premises and 6,249 off-sale premises in Scotland in 2002. I might be wrong, but I imagine that about 40 per cent of those are in the Glasgow area, which means that there are 4,000 to 5,000 on-sale premises and 2,000 to 3,000 off-sale premises there. To me, the idea that one board of 10 individuals with a quorum of three could adequately supervise that number of premises is ridiculous, if we want to modernise and improve the situation. What is your opinion of that?

18:30

Peter Daniels: I agree 100 per cent, but 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—I am not sure what the total number of councillors is.
Tommy Sheridan: There are 79, but there will probably be 80, although we are waiting for a report on that matter.

Similarly, would it assume too much to suggest that you would say that the local licensing forums in Glasgow could therefore reflect those licensing boards? As you will have noticed when I drew attention to schedule 1, as the bill is drawn up, there will be a maximum of three local representatives in a city of 400,000 people. Do you agree that that would be inadequate local input?

Peter Daniels: I am not sure what the bill proposes for situations in which there is more than one licensing board in a council area, but I presume that there would be no barrier to a council establishing a forum for each board area, if it decided to have more than one board. I do not see a problem with that, although Tony Rednall can correct me if I am wrong.

Tony Rednall: I do not think that that is wrong.

Superintendent Clelland: I agree that the proposal to have several boards in Glasgow would give greater community participation—there is no doubt about that—but one balancing consideration is the consistency of decision making. A decision in one area of Glasgow might conflict with a decision in another area, even if the applications were roughly the same. That is a concern that the current Glasgow licensing board may have about such a division.

Tommy Sheridan: I suppose that I would see that as a strength rather than a weakness, because we would then have a genuine reflection of local views, rather than the one-cap-fits-all approach of a single board. Such a system would encourage devolution of decision making to as local a level as possible. If that resulted in an application in the west end being treated differently from one in the east end, so be it.

Michael McMahon asked Peter Daniels whether the bill would achieve the aim of reducing underage drinking. Peter Daniels was honest about that and said that it may help, but that the problem is a cultural one that will take a long time to change. My argument is that there is a lack of policy focus on reducing overall consumption of alcohol, not just consumption by young people, through tackling the cultural problem. We, as a country, consume too much alcohol. Is there room in the bill for statements that are more proactively about encouraging a culture in which, “It’s no a problem if you don’t want a drink”—to use a “Chewin’ the Fat” expression—rather than a culture in which it is a problem?

Peter Daniels: Goodness. If you are asking me as an individual, I point out that I am teetotal. That is not because of principles or morality, but simply because I do not like the taste of alcohol. I do not drink beer, wine or whisky—I am a Diet Coke and orange juice man. As I understand it, the view of Nicholson and the Executive is that drinking is a socially acceptable phenomenon if it is done in moderation. The policy memorandum has a few pages about the importance of the trade to the Scottish economy. Those big policy issues are for ministers to get to grips with rather than for our little working group, which is considering off-licences. I can answer in a personal capacity, but my answer as chairman of the working group is that the policy issues are too big for us.

Tommy Sheridan: I must point out that smoking tobacco, which is a legal drug, was socially acceptable until recently and that there is a big drive to make it socially unacceptable. I hope that the Executive will take a similar attitude to drink.

Peter Daniels: So do I.

Tommy Sheridan: Perhaps I should have declared from the start that I, too, am teetotal.

My final question is for George Clelland; I want to take advantage of his police experience. The issue is not particularly relevant to the working group, but you will have heard the discussion about section 86, which would confer a power on licence holders to use reasonable force to remove people from premises. I have big worries about that. You have heard Sheriff Principal Nicholson and, I think, the Scottish Executive express doubts about the provision. As a professional, what is your view on the proposed power?

Superintendent Clelland: 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.

The Convener: That brings us to the end of our questions. I thank Peter Daniels, Superintendent Clelland and Tony Rednall. I apologise for keeping you so late, but, as with the previous two sessions, we have found this session to be useful to our consideration of the bill.

We will deal with the final two agenda items in private.

18:38

Meeting continued in private until 18:46.
SUBMISSION FROM SHERIFF PRINCIPAL NICHOLSON

LICENSING (SCOTLAND) BILL

Comments by Sheriff Principal Gordon Nicholson CBE, QC

General comments

I have now examined and considered in detail the Licensing (Scotland) Bill, and the accompanying Policy Memorandum, and I hope that it may be helpful if I were to offer some comments, particularly in relation to the Bill. At the outset I should say that my comments are based on copies of the Bill and Memorandum which were sent to me a few days before the Bill was introduced in the Parliament. I understand that it is possible, therefore, that both documents may have undergone some change before the actual date of introduction; and it follows that any of my comments which have been overtaken by any such change should be ignored, or at least should be read subject to any such changes.

As a general observation I should say that I am delighted that, for the most part, the Bill seeks to give effect to almost all of the recommendations which were contained in my Committee’s Report. That is a great cause for satisfaction on my part, and I have no doubt that that satisfaction will be shared by all the members of my Committee. I should also like to say at this stage that I consider that those who drafted the Bill are to be congratulated on having dealt with a complex topic in a masterly way. As will be seen shortly, I have a considerable number of comments on particular matters of drafting. However, in a complex Bill such as this I think that it would be surprising if the Bill were to be absolutely perfect in its very first manifestation, and it is for that reason that I hope that my comments will be seen as being constructive and helpful.

Before turning to an examination of the detailed provisions of the Bill there are some general matters on which I wish to comment. The first relates to access to licensed premises by children. This is mentioned at paras. 18, 87 and 139 of the Policy Memorandum, but (unless I have simply overlooked something) it does not appear to be dealt with at all in the Bill. I cannot imagine that this is a matter on which legislation can simply remain silent, and I am perplexed as to why there is nothing in the Bill to deal with this.

My second general comment relates to the matter of overprovision. Paragraph 48 of the Policy Memorandum conveys the impression that, by reason of what is contained in the Bill, Licensing Boards will in future, and for the first time ever, be able to give consideration to this when they were not able to do so under the provisions of the 1976 Act. That, of course, is not so. Overprovision is expressly set out as a ground for refusing an application in section 17(1)(d) of the 1976 Act. It is almost certainly the case that most, if not all, Licensing Boards have in the past given little or no constructive thought to the matter of overprovision: but that is not because the matter is not provided for in existing legislation.

In relation to a National Licensing Forum I can fully understand why it is considered that this should be established as a Task Force with the consequence that it is not necessary to set it up in primary legislation. At the same time I tend to think that the Bill looks a little odd in not making any mention of the National Forum at all, particularly when, as I understand it, the general guidance which Ministers are to be empowered to give to Licensing Boards will, at least to some extent, be based on advice given to them by the National Forum. I therefore wonder whether, perhaps in clause 133(1), it might be possible to insert words along the lines of “after considering such advice as may be offered by any National Licensing Forum which Ministers may have established”.

At para. 83 of the Policy Memorandum it is said, consistently with the recommendations of my Committee, that a Licensing Board should be obliged to consider an application on its merits even in the absence of objections. I am not sure, however, that this clearly emerges from the Bill as presently drafted, and I return to this matter when I come to the relevant clause(s). By the same token, I am not sure that the Bill at present makes it sufficiently clear that a Board can authorise
opening hours other than those applied for where the Board considers that to be appropriate (see para. 99 of the Memorandum).

My last general comment relates to the matter of ECHR compliance (see paras. 164 to 166 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. However, leaving my own doubts aside, there is, I believe, a drafting problem even if the Executive's policy on this is to hold sway. That is that I do not consider that the current provisions in the Bill are clearly seen to entitle a local authority to hold a licence in its own name. I deal with this in detail when I come to the relevant clauses in the Bill. I also note that the last sentence in para. 166 of the Policy Memorandum makes reference to judicial review. My Committee recommended that in future all decisions by a Licensing Board should be subject to appeal to the sheriff principal (and that recommendation appears to have been followed up in the Bill). Our purpose in making that recommendation was in part to remove the need, which exists at present, for certain decisions to be challenged by the slow and expensive process of judicial review in the Court of Session. It would, I suggest, be unsatisfactory if it were to remain the case that some decisions should only be open to challenge by that means. It may be, of course, that the reference to "judicial review" in the sentence which I have mentioned is intended simply as a shorthand reference to appeal procedures: I hope that that is the case.

The Bill

I now turn to consider the clauses in the Bill in more detail. It may be assumed that, when I do not refer specifically to a particular provision, I am content with what is currently provided in the Bill. I should also add that, while some of the following comments arise from my chairmanship of the Nicholson Committee, many others are inspired by my judicial experience of struggling with problems of legislative interpretation. My comments are as follows.

Clause 1(4)

I am a little concerned about the relationship between the maximum fine and the maximum term of imprisonment permitted under this provision. Normally, in my experience, the maximum term of imprisonment which may be imposed directly is roughly the same as the term which may be imposed in the event of non-payment of the maximum permitted fine. However, the maximum term of imprisonment which may be imposed for non-payment of a fine of £20,000 is 12 months (Criminal Procedure (Scotland) Act 1995, s. 219(2)). That is double the length of sentence that can be imposed directly. That also means that, if a person were to be sentenced to both the maximum term of imprisonment and the maximum fine, and were to default in payment of the fine, he could be sentenced to a maximum of 18 months imprisonment. That might be thought to be a pretty hefty punishment for a court of summary jurisdiction. I realise that the example which I have given may be unlikely to arise in practice, but it may be that this is something which merits some reconsideration. There are, I should add, some other penalty provisions in the Bill which raise the same consideration.

Clause 2(1)(b)(iv)

I was a little surprised to see that angostura bitters is not classed as “alcohol”. I happen to have a bottle of that at home, and I note that on the label it is stated that its alcohol content is 44.7% by volume!

Clause 6

First, a general point. Clause 138 of the Bill very helpfully provides an index of defined expressions so that the user of the legislation can speedily find the appropriate interpretation of the many terms of art which are used throughout the Bill. However, I have found many instances where particular terms are not listed in clause 138. Some examples are to be found in this clause -- “licensing policy statement” (sub-clause (1)), “supplementary licensing policy statement” (sub-clause (2)), and “3 year period” (sub-clause (7)). I venture to suggest that it would be helpful if there were to be an exhaustive trawl of the Bill to ensure that all the terms of art which are expressly defined in the Bill
are mentioned in clause 138. In what follows I mention those omissions which have caught my eye, but I do not claim that I have noted them all.

Sub-clause (5) provides for statistical or other information to be made available on request to a Licensing Board. I welcome this provision, but I wonder if it is unnecessarily restrictive in that the providers of information are limited to the appropriate chief constable and the relevant council. I could, for example, imagine instances where a Board might wish information from, say, a Health Board. Is there, perhaps, a case for widening this provision to some extent?

Clause 7

I am not entirely clear as to the purpose of this provision. In principle I can see advantage if in future Boards carry out proper assessments of overprovision, and then use such assessments to inform policy statements. Where that is done, those contemplating an application for a new premises licence in a particular locality will be able to see in advance whether their application is likely to be refused on the ground of existing overprovision. However, I have some anxiety that this provision may, at the time of the changeover to the new regime, be used as a basis for refusing to convert an existing licence into a new premises licence, particularly given the declared policy decision not to honour so-called “grandfather rights”. I suspect that there would be a considerable amount of challenge through the appeal courts if old-established licensed premises were to be refused a conversion to a new premises licence simply on the basis that a Board considered that there was already overprovision in the locality in question.

On a point of detail I note that sub-clause (3) refers to the “number and capacity” of licensed premises in the locality. In the Nicholson Report we suggested the use of the words “type, number, size and capacity”, and we did so on the basis that the use of all these words would enable a Board to focus on all of the characteristics which might be relevant to an assessment of overprovision. I respectfully suggest that there would be advantage in using the Nicholson formulation. Were that to be done, similar changes would be required elsewhere in the Bill.

On another point of detail, I note that the persons listed in sub-clause (4) are different from those listed in clause 20(1). It is not clear to me why there should be this difference.

Clause 12(3)

See my comments above in relation to clause 6(5).

Clause 17

This is another example of a definition which is not mentioned in clause 138.

Clause 19

As I mentioned at the beginning of this Note I think that, as presently drafted, the Bill does not make it clear that a local authority can apply for, and hold, a premises licence. Clause 19(1) provides that any “person” other than an individual under the age of 18 may apply for a premises licence. Various later provisions cast light on what is encompassed by “person” in the foregoing provision. Thus, clause 20(1)(c) provides that notice of an application has to be given to “the council within whose area the premises are situated”. Since that is not qualified by words such as “except where it is itself the applicant” the implication would appear to be that a council is not to be a lawful applicant. That view seems to be further confirmed when one comes to clause 20(4)(a)(ii) which recognises that an applicant may be a partnership or a company, but where there are no words that would be appropriate in the case of a local authority. Thus far, therefore, there must, I suggest, be doubt as to whether a local authority is to be entitled to apply for a premises licence in its own name. However, when one turns to clause 132(2)(b) one finds express provision explaining what is meant by a “relevant person” in the case of a council – a provision which would be meaningless and unnecessary if a council was not to be entitled to apply for, and to hold, a premises licence. I also note in that connection that clause 132 refers to “an unincorporated association other than a Scottish partnership”, but that phrase is not used in clause 20(4)(a)(ii).
seems to me that there is a lack of consistency here, and I respectfully suggest that the drafting may require revision.

**Clause 20**

Sub-clause (1)(a) refers to a person having a “notifiable interest”, and to “neighbouring land”, and those words are then defined in sub-clause (6). However, that sub-clause simply says that the expressions are to have such meanings as may be prescribed. I fully support a policy of having, for example, procedural provisions set out in secondary rather than primary legislation, and I am delighted that, consistently with my Committee’s recommendation, that approach is being followed in the present Bill. However, the categorisation of those who are to be entitled to receive notification of an application seems to me to be a matter which ought to be set out in the primary legislation.

On a minor point I suggest that, in clause 20(2), the last words should be “a copy of the application and a copy of all accompanying documents”. As the provision stands it appears to mean that only an application need be notified but not the accompanying operating plan etc.

**Clause 21**

Obviously, I suppose, the first point that caught my eye in this clause is that, subject only to the provision about objections which are frivolous or vexatious, this permits “any person” to object to, or to make representations in respect of, an application for a premises licence. That goes some way beyond the “real and material interest” test proposed in the Daniels Report (and subsequently supported in the White Paper), and considerably beyond the proposals contained in my own Committee’s Report. 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. However, if it be the will of Parliament to follow the line set out in the Bill, then so be it.

I also have some comments on points of detail in relation to this clause.

First, I would simply observe that the words “any person” may give rise to the same doubt in relation to local authorities as I have already mentioned in relation to such authorities applying for, and holding, a licence in their own name.

My second specific comment relates to sub-clause (3). This provides that an objection etc may be rejected if it “is” frivolous or vexatious. That form of words is to be contrasted with clause 34(6) which provides that a review application may be rejected if a Licensing Board “considers” the application vexatious or frivolous. In my opinion the use of the word “is” in clause 21(3) may well cause problems since it requires a positive determination of fact whereas the words used in clause 34(6) require no more than a subjective judgment on the part of the Board. I suggest that the wording in clause 34(6) should be used here.

There is a final point here which I return to in more detail when I come to the appeal provisions in clause 122. I consider that it would be seen as contrary to natural justice that an objector whose objection has been rejected for whatever reason should have no right of appeal against such a decision: but that currently appears to be the position in terms of the Bill as presently drafted.

**Clause 22**

This clause highlights the general comment which I made at the beginning of this note to the effect that I am not sure that the Bill, as presently drafted, makes it clear that, even in the absence of objections, a Licensing Board should consider an application on its merits and refuse the application if the board considers that a valid ground for refusal exists. Equally, I am not sure that
the Bill makes it clear that a Board is entitled to require modifications of all kinds in respect of what is sought by an applicant before a licence will be granted.

In that connection I am a little concerned by sub-clause (3) because the use of the word “established” may be seen as suggesting that a Board can only found on a ground for refusal when that is “established” by an objector, and in the absence of that having happened must grant the application regardless of what the Board may itself think. In other words, “established” seems to exclude “found by the Board even in the absence of objections”. In much the same way, sub-clause (7) seems to me to make it less than wholly clear that a Board is to have the power to require modifications of any kind that it considers appropriate before it will grant a licence – again, even in the absence of objectors. I venture to suggest that the drafting of this clause might with advantage be reconsidered.

On a minor point I note that sub-clause (5)(d) raises the same point as has already been mentioned in respect of clause 7.

**Clause 23**

I am pleased to see that this provision gives effect to recommendation 68 in the Nicholson Report.

**Clause 25**

If it were to be thought that there is some force in what I have said above in relation to clause 22, it may be that the wording of this clause may also require some reconsideration. Subject to that, I have no difficulty with what is provided here.

**Clause 26**

My only comment here is that sub-clause (5)(d) and (e) offer a further reflection of what I said above in relation to clause 19 and the holding of premises licences by a local authority. Taken on their own these sub-clauses do not appear to recognise that a licence may be held by such an authority.

**Clause 27**

I have some anxiety about the definition of “minor variation” in sub-clause (6). In relation to head (a) suppose, for example, that a corner grocery shop holds a premises licence subject to a condition that the display area for alcohol should not exceed a prescribed amount of wall space. If that licence holder were to decide to stop selling groceries and to fill his whole shop with alcohol that would not, I suggest, amount to a change in the “capacity” of the premises but it would, I also suggest, be more than just a “minor variation”. I also have some doubt as to whether a variation under head (b) will inevitably be no more than a minor variation but, in the absence of any other provision in the Bill relative to access by children and young persons, I am not aware what the general policy on this is intended to be. Given that, under clause 28(2), an application for variation must be granted where the variation is a minor one I respectfully suggest that the definition merits some reconsideration.

**Clause 28**

In relation to sub-clause (4) I have the same comment about the words “is established” as the comment already made above in respect of clause 22(3).

Likewise, what I have already said in relation to clause 7(3) regarding “number and capacity” applies in relation to sub-clause (5)(c) here.

**Clause 34**

In relation to sub-clause (5) I suggest that, in the interests of fair notice, it will not be sufficient for a review application simply to specify a condition or a licensing objective. It should also be required
to set out the facts and circumstances which are said to constitute the alleged breach. The same point also arises in respect of clause 35(4).

I have already noted above (in relation to clause 21(3)) that this sub-clause uses the word “considers” whereas that word is not used in the earlier sub-clause. I suggest that the wording here is to be preferred.

Clause 36(6)

I wonder if it is enough that a Board is to be entitled to “request” the matters specified here. If review hearings are to have credibility I should have thought that a Board should be entitled to “require” attendance, etc.

Clause 41(2)(b)

This sub-clause, taken along with clause 137(2) which defines “connected person”, is another example of a provision which does not cater for, and therefore casts doubt on the legality of, the holding of a licence by a local authority.

Clause 42(5)(b)

Given that clause 37(2) empowers a Licensing Board to issue a written warning as an alternative to variation, suspension or revocation I am not clear why a written warning is excluded in this sub-clause.

Clause 48

I have no quarrel with what is provided here. However, this may be an appropriate spot at which to raise a query regarding the fact that neither the Bill nor the Policy Memorandum says anything about fire safety, a matter which was explicitly mentioned in my Committee’s Report (see paras. 4.16 to 4.18 and recommendation 13). I assume that it must have been decided as a matter of policy not to follow up our recommendation, but it would be interesting to know the reasons for that.

Clause 56

This is another example of a provision where it is not clear that a Licensing Board is to consider an application on its merits even in the absence of objections etc. (cf. my comments in relation to clause 22 above.)

Clause 59(5)

This is another example of a definition which is not mentioned in clause 138.

Clause 60

I can understand the policy which underlies this provision, and I am not wholly unsympathetic to it. However, I venture to doubt whether the provision, as presently drafted, will achieve the desired result. Moreover, I do not think that the clause sits easily with clause 22(7) which empowers a Licensing Board to modify an operating plan and to grant the licence subject to that modification.

The first point which occurs to me is that this clause 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.

I am not persuaded, however, that there is in fact a need for a stand-alone provision of this kind. Given that a Licensing Board is to have power to refuse an application in the terms sought by the applicant but to grant it subject to such modifications as the Board considers to be necessary, and
assuming that the provisions to that effect in clause 22 can, as I have suggested earlier, be made clearer, would it not be sufficient to insert a sub-clause along the lines of what I have just suggested in the paragraph above into clause 22?

Clause 78(4)(b)

I assume that this is to be read in conjunction with what is contained in clause 82(2)(c). In the Nicholson Report we recommended that different levels of training and qualification should be required depending on the nature of the premises which a premises manager is to manage, and I assume that that is, at least in part, what is envisaged by the term “prescribed information” as used in clause 19(4)(c). It may be that the Bill could make this clearer.

Clause 85

This clause is plainly intended to give effect to recommendation 64 in the Nicholson Report, and I am therefore glad to see it. However, with the benefit of further reflection since seeing this clause as drafted I consider that in one respect our recommendation, and this clause, have got it wrong. That is in relation to applications at the instance of a premises licence holder.

In our Report we recommended in favour of such a right of application, but that was against the background that at present it seems to be the case that courts are either unaware of the power which currently exists under the Licensed Premises (Exclusion of Certain Persons) Act 1980 or at least choose not to use it, possibly because it does not extend to off-sale premises. The new Licensing Bill, when enacted, should bring this power more clearly to the notice of courts, and as a consequence it is likely that in future the possibility of making an exclusion order at the time of sentencing will much more frequently at least be considered by the courts concerned. But, the difficulty then is that, if there is to be a power for a sheriff to entertain an application by a licence holder after an offender has been convicted and sentenced in another court, the sheriff will have no means of knowing whether or not the judge in the original court considered making an exclusion order and deliberately chose not to do so for, possibly, good reasons. To take an extreme example, suppose that an offender was convicted in the High Court of a serious violent offence which had occurred in licensed premises, but the Judge had not made an exclusion order. In such circumstances it would, I suggest, be very difficult for a sheriff subsequently to make an order on the application of the licence holder when, by so doing, he or she would implicitly be suggesting that the High Court Judge had erred. Similar considerations would apply, albeit with slightly less force, where matters are not dealt with so speedily, my suggestion should not present difficulty. I venture to think that what I have been saying here is worthy of consideration.

Clause 86

Sub-clause (2) provides that the maximum penalties for breaching an exclusion order are to be a fine not exceeding level 4 (£2,500) or imprisonment for a term not exceeding one month. Given what has often been said by the Appeal Court regarding the undesirability of short prison terms I venture to doubt whether the imprisonment option is ever likely to be attractive to courts. In any event, I suspect that most judges would be with me in thinking that a one month term is likely to be
inadequate in the event of repeat offending. I respectfully suggest that the prescribed maximum term of imprisonment should be three months.

While I do not necessarily disagree with what is provided in sub-clause (4), I think that I have to comment that this is, in my experience, a novel provision in that it authorises a person other than an officer of law to use force in order to bring about compliance with an order of the court. I suspect that some Members of the Parliament may have views about this.

Clause 88

The term "senior police officer" as used in this clause is defined in clause 92, but the expression is not one of those listed in clause 138.

Sub-clause (8) provides for maximum penalties of a fine not exceeding £20,000 and imprisonment not exceeding 3 months. I have already commented on similar provisions in clause 1(4) but in that case, while the maximum fine is the same as here, the term of imprisonment is six months compared with 3 months as provided here. Quite apart from my general observations in relation to clause 1(4) I should have thought that, in the interests of consistency, a maximum fine which is the same in both cases should be matched by identical terms of imprisonment.

Clause 94

This, and several of the following clauses, sets out offences which may be committed by a "responsible person". Those words are defined in clause 114 (though I note that they are not mentioned in clause 138). Given that a premises manager may not be present in the licensed premises at all times (see Sched. 3, para 4(3)) I suggest that there may be advantage in enlarging the scope of the definition so as to include any person in charge of the premises in the absence of the premises manager.

Clauses 98, 99 and 100

I find it difficult to understand the policy underlying these provisions. This is no doubt my fault, but it does seem to me that some of the provisions are mutually inconsistent.

Clause 102(2)

Should this contain the same exception as in sub-clause (1), namely "other than premises on which the person resides"?

Clause 109

It is possible that I do not fully understand this part of the Bill. However, I note that, in terms of clause 116(1)(c), a railway vehicle while engaged on a journey is to be treated as exempt premises. That being so, it is at first sight somewhat contradictory to provide here that it is to be an offence to sell alcohol on a moving vehicle. In fact that apparent contradiction is made clear when one turns to clause 137(1) where "vehicle" is defined as a "vehicle intended or adapted for use on roads". In the interests of assisting the reader of the legislation I wonder if there might be advantage in adding, after "vehicle" in clause 109(1), words along the lines of "not being a railway vehicle".

I also note that sub-clause (2) gives rise to a difficulty similar to that which I have already mentioned in respect of clauses 1(4) and clause 88(8).

Clause 115

It is noted in the Policy Memorandum (para. 73) that there will be flexibility to ensure that community stores/petrol stations in rural areas will not be adversely affected where they provide a community resource other than just for petrol. That sort of flexibility was recommended in my Committee’s Report. However, it is my view that this clause, and in particular what is contained in sub-clause (4) does not allow for any such flexibility. I suggest that this might be looked at again.
Clause 116(1)(d)

If I understand the position correctly this sub-clause, taken with the definition of “international journey” in sub-clause (4) will have the effect that there will be no exemption for, for example, ferries from the mainland to the Northern Isles or to Northern Ireland. I assume that such vessels are to be dealt with under the provisions of clause 118. I wonder, however, whether a cross-reference might be helpful here.

Clause 119

Sub-clause (5) raises the same sort of difficulty as in clauses 1(4), 88(8) and 109(2).

Sub-clause (6) defines “senior police officer” for the purpose of the section as meaning a constable of or above the rank of inspector. However, I note that in clause 92 the same words are defined as meaning a constable of or above the rank of superintendent. It is not clear to me why there should be a difference.

Clause 122

I have a considerable number of comments in relation to this clause.

First, and perhaps most importantly, I am concerned that, as presently drafted, this clause denies a right of appeal to many persons who ought to have such a right. In terms of sub-clauses (1) and (2) a right of appeal is conferred on an applicant and on the holder of a premises licence in respect of a review application or proposal, but on nobody else. What this means is that there is to be no right of appeal in respect of (a) those who have objected or made representations in respect of an application and whose objections or representations have been rejected for whatever reason; and (b) a personal licence holder who has been the subject of any of the sanctions provided for in clauses 75 and 77. 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.

My second comment relates to sub-clause (4). Given that the main thrust of clause 122 is to give effect to my Committee’s recommendation that in future appeals should go to the sheriff principal by way of stated case I do not understand why appeals of a kind that may be the most complex and important should proceed by way of summary application to a sheriff. (Incidentally, I also do not understand why appeals of the latter kind are to be restricted to suspension decisions and do not also include revocation decisions, both of which have the immediate effect of closing the premises in question.)

I wonder if it is possible that my Committee’s recommendation in this regard may have been misunderstood. Our view was that, if a decision requiring closure of premises was to have immediate effect notwithstanding the marking of an appeal (which is not the case under existing law), there should be a simple procedure whereby the immediate effect of a Board’s decision could be given judicial scrutiny on an interim basis and pending disposal of the appeal by the sheriff principal. We saw this as analogous to the procedure whereby a person who has been sentenced to a term of imprisonment may apply to a single judge for interim liberation pending the hearing of his appeal. Our intention was to take note of the fact that closure, possibly for several months pending the hearing of an appeal, could have a disastrous effect for the business concerned – particularly if, at the end of the day, the appeal was successful. Accordingly, we saw advantage in having a speedy process of application to a sheriff who would consider not whether the appeal should be allowed but whether the appeal was or was not arguable, and in the former case whether, on a balance of convenience and having regard to such other factors as might be prescribed, the sanction imposed by the Licensing Board should be suspended ad interim pending disposal of the appeal by the sheriff principal. I respectfully suggest that this part of clause 122 requires reconsideration.
There is a related point which may disappear if effect is given to what I have just been saying. That is that, as presently drafted, an appeal against an order for suspension (or revocation) is to proceed only on the ground specified in sub-clause (5)(b). I suggest that it would be quite wrong to exclude from consideration errors of fact or law.

In this connection I also note that, in sub-clause (5)(a)(iv), the “unreasonable” ground of appeal, which is also in the 1976 Act, remains unchanged. My Committee recommended a departure from this ground of appeal, largely on the basis that it has recently been the subject of much criticism in the House of Lords (see our Report, recommendation 54, and Appendix C, paras.31 to 38). So far as I can see, the Policy Memorandum does not explain why our recommendation on this has not been accepted.

Schedule 3

If I may say so, I think that this Schedule, and in particular paras. 7 and 8, represents a bold and imaginative approach to tackling the problem of irresponsible promotions and binge drinking. I hope that this will have the desired effect, but I consider that it is prudent that, as appears in the Schedule itself and also in clause 25, Scottish Ministers have taken powers to add to or to modify the mandatory conditions as and when that appears to be necessary.

Conclusion

I hope that the foregoing comments may be seen as helpful. Needless to say, I am happy to enlarge on any of them should that be seen as desirable.

Gordon Nicholson
Scottish Parliament
Local Government and Transport Committee
Tuesday 12 April 2005

[THE CONVENER opened the meeting at 14:08]

Licensing (Scotland) Bill: Stage 1

The Convener (Bristow Muldoon): I open this meeting of the Local Government and Transport Committee. The main item on the agenda is our further consideration of the Licensing (Scotland) Bill, on which three groups of witnesses will give evidence.

Before I welcome the first group of witnesses, I should inform members, the public in attendance and anyone who is watching the proceedings on the web that, for its consideration of the bill, the committee has established a web forum that can be accessed through the Scottish Parliament’s website. Committee members should advise community groups of that forum and I encourage interested members of the public who wish to express their views on the bill to access the site and contribute to the debate. I also encourage committee members to study the submissions that are made on the site as part of their consideration of the bill.

I welcome to the meeting Paul Waterson, who is the chief executive of the Scottish Licensed Trade Association, and Colin Wilkinson, who is the association’s secretary. I invite you to make some introductory remarks about the bill’s content and the SLTA’s views, after which we will move on to questions and answers.

Paul Waterson (Scottish Licensed Trade Association): I thank the committee for giving us the opportunity to attend the meeting and to represent the SLTA’s views. Our members believe that it is a privilege to hold a liquor licence and that such a privilege is accompanied by a responsibility not only to the trade and our customers, but to Scottish society in general. When we sell alcohol, we have to maintain a difficult balance between responsibility, moral obligation and ambition, which we must harness together as we pursue our profits.

The profit motive must be underpinned by the realisation that alcohol is a dangerous product when abused. We serve alcohol to hundreds of thousands of people every day and we and our staff can do much to promote sensible drinking. Indeed, our association believes that it is our duty to do so.

Judging by the current situation, we seem to have a big job on our hands. A whole raft of statistics shows that alcohol abuse is on the increase and that binge drinking, fuelled by unacceptable promotional techniques, is here with a vengeance. Binge drinking is caused by a market that has become increasingly over-provided and by the indiscriminate granting of licences to untrained and unsuitable people.

The new legislation should be judged on how it attacks such problems. It should also be consistent, fair and efficient enough to allow the majority of the population to enjoy the social benefits of alcohol while protecting those who abuse it. It must be flexible enough to allow responsible licensees to continue to improve services and standards while ridding the trade of those who actively promote alcohol abuse. Finally, it must balance the needs of business with the need for controls.

Although the problems associated with alcohol abuse are varied and complex, no one should underestimate the important role that licensing law—and, indeed, licensees—can play in helping us to solve the problem.

Paul Martin (Glasgow Springburn) (Lab): Schedule 3 to the bill covers irresponsible drinks promotions. Are you satisfied with the content of those provisions? Are there any loopholes in those provisions?

Paul Waterson: It is difficult to come up with a definition of “irresponsible drinks promotions”. We have been on about such promotions for the past 20 years, so the matter is not new to us.

The proposals in schedule 3 are almost right. The list of banned promotions is fairly comprehensive and will be relatively easy to work with. However, the 48-hour rule set out in paragraph 6 is not perfect. I believe that allowing drinks promotions to last for 48 hours instead of for one hour might create a loophole, which we will have to examine. However, concentrating on all promotions that infringe licensing objectives—which, after all, are the benchmark that everything else should be judged against—should close off many loopholes. Because of the competitive nature of the business, people will be sitting down just now to work out ways around the provisions. As a result, we need to examine the schedule.

Paul Martin: Are current irresponsible drinks promotions profitable? If that means of income is withdrawn, will other elements be introduced to make up that profit?

Paul Waterson: Whole empires have been founded on the concept of getting as many people in as possible, getting them drunk as quickly as possible, getting them out and then getting new people in to get drunk as quickly as possible.
There is no doubt about that and it is a totally irresponsible way of operating. Indeed, it is a supermarket style of selling alcohol, which is a unique product and should not be sold in the same way as bread or eggs. That is why it is licensed in the first place.

The Convener: In your submission, you say that, although you are comfortable with the provisions on irresponsible drinks promotions in the on-trade, you are concerned that they largely exempt the off-trade sector. What measures do you suggest should be introduced to ensure that all licensed premises are treated equally?

14:15

Paul Waterson: 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. That is not all. Off-sales will now be given the opportunity to open for 24 hours. They have already been allowed to sell alcohol in any part of the store. Before the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 was passed, they had to sell alcohol from an enclosed space, with its own till. The alcohol also had to be sold by a person over 18. Now a person under 18 can sell it and it can be sold in all parts of the store. Alcohol is being sold like any other product. It is important that we send out a signal that alcohol is unique and that off-sales should be included in the irresponsible promotions package. We do not want to force people out of pubs to abuse alcohol in the home and on the streets.

The Convener: Can you suggest any specific new initiatives? For example, a major supermarket could comfortably hold down a price for 48 hours. One big issue is the fact that the cost of alcohol in the off-sales trade is considerably lower than it is in on-sales, because off-sales do not have the same overheads on premises and so on and often sell a range of other goods. Are there any specific new initiatives that the committee should suggest to the Executive?

Paul Waterson: We could consider a package of promotional activity that should not be allowed in off-sales. We could start with anything that impinges on the licensing objectives and work our way back from that. The aim is not to protect any part of the trade, but to stop people abusing alcohol. Often the products that supermarkets and off-sales sell are entirely different from those that are normally sold by the on-trade. I refer to 2-litre bottles of cider, tonic wines and some of the stronger drinks. We could come up with a package that was tailored to fit the off-trade. In principle, off-sales must be included in the irresponsible promotions package. It would be ridiculous for one section of the trade to be outwith that.

Tommy Sheridan (Glasgow) (SSP): I found much of your written evidence persuasive, but I would not mind investigating further some parts of it, especially those relating to the licensing boards. You indicate that you are concerned that the bill as drafted gives more power to licensing boards and that you are worried about the politicisation of the process. I am worried that, in big cities such as Glasgow, licensing boards are not sufficiently community responsive, because there is one big board for a population of 600,000.

If we stick with the recommendation that boards should have a maximum of 10 and a minimum of five members, with a quorum of three—to which you have referred—how would the Scottish Licensed Trade Association respond to the larger conurbations dividing their boards? For example, in Glasgow there might be five or six boards, based in different parts of the city—the south, the south-west, the north, the east and so on—rather than one. The current licensing board councillors seem to oppose that suggestion. I am seeking more community involvement in the process. What is the association’s view?

Paul Waterson: 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 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.

There are four key elements that can really make a difference. One concerns the number of outlets in Scotland. Boards will have to form their own opinions on over-provision. At the moment, the Glasgow licensing board is saying that it does not believe that it can ever use over-provision as a ground for not granting a licence and the Edinburgh licensing board is saying that there are over-provided parts of the city. We are stuck in the middle when not even the two biggest cities in Scotland can agree on over-provision.

Licensing boards will also have total jurisdiction over, and form their own policy on, opening hours,
Tommy Sheridan: It seems to me that the problem is not the number of licensing boards, but the number of interpretations of policy. If there were 200 licensing boards that all applied the same policy, we would not have the problem that you are talking about.

Paul Waterson: That is why we would like the system to have much stronger legislation at the centre with a bit of local flexibility. At the moment, it seems that all the flexibility is being given to the boards, which will decide on the key elements that I have just mentioned. If, at the centre of the system, strong legislation set out the permitted hours and gave licensing boards the flexibility to grant an extra hour here or there, perhaps we could have more boards. However, as the bill is worded, it would be chaos to do that.

Tommy Sheridan: One of the main policy objectives of the bill is “providing a voice for communities”.

You said that, if there were a system of smaller boards in Glasgow, one side of the street could be subject to a different interpretation of licensing policy from the interpretation applied on the other side of the street. The problem is that, if that is what a local area wants, that is what devolving power can mean. As you know, there would probably be a more liberal attitude to outlets in the west of Glasgow than there would be in some of the housing schemes in the city, particularly to off-sales, which can become the focus of many problems in communities. Do you not accept that, if we are giving a voice to communities, we must devolve decision making to as low a level as possible?

Paul Waterson: To do that, we must have strong legislation at the centre, because we need consistency. If we had that, we could perhaps consider having more licensing boards but, under the bill as it is worded, it would be chaotic to have even more boards. Indeed, the situation is chaotic at the moment, because licensing boards often change their policies from one meeting to another. If we totally trusted boards, the proposals might work. However, although there are good boards, some boards are not as good as others. That puts us in a difficult position if we are looking for a consistent, fair package for the businesses that are involved in the trade.

Dr Sylvia Jackson (Stirling) (Lab): Yesterday, we heard from local communities that they want more of a say in the granting of licences—that was the main issue. I take your point that, if we had stronger principles at the centre, we would not get the variation that we might get if we devolved more power to local communities. However, is there another way in which the licensed trade can become more involved with communities? What sort of relationships do you have with communities that allow you to discuss with them matters such as the opening of a new establishment or a change in trading hours? I am thinking about relationships that involve members of your trade rather than those that involve your central organisation. How closely does your trade work with community councils and similar bodies to ensure greater community involvement?

Paul Waterson: 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.

The bill recognises that going before a licensing board is a difficult experience for an objector and it tries to make the process a bit more user friendly. It appears that under the objection regime anyone can object to a licence application, regardless of where they live, as long as their objection is not frivolous or vexatious. We think that only someone from the relevant licensing board area should be able to object. That would make the system a lot easier. I do not think that the idea that anyone can object will work.

Dr Jackson: Let us say that I live on a housing scheme and there is the prospect of a corner shop that will have an off-sales opening. How do you imagine that the local licensing forum will work in such a way that I will be able to have an input?

Paul Waterson: That is a good point. 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.
The Convener: You raised the issue of people from anywhere being able to object to a licence application. I understand your concern about the ability of someone who lives quite far away from the relevant licensing board area to object. Is it correct that you would be relatively comfortable if someone who resided close to a premises that was right on the edge of a local authority area, but who lived just outside that area, could comment on a licence application for that premises?

Paul Waterson: 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.

The Convener: Would it be possible to couch the provision in such a way that someone who wished to object to a licence application must live in the relevant licensing board area or within a designated distance of the premises in question?

Paul Waterson: It might be possible to do that.

Michael McMahon (Hamilton North and Bellshill) (Lab): My question relates to licence types and it is about over-complication and discrepancies. At the moment, there are seven licence types, but it is proposed that there should be only two. Do you think that that is right? Is there a problem with having seven licence types and, if so, do you think that the solution is to reduce the number of types to two? Does the answer lie somewhere in between?

14:30

Paul Waterson: That is a key issue. 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 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 kept three different types of licence for three entirely different disciplines. Running a nightclub is entirely different from running a pub or an off-sales.

Then we bring hotels into the mix. For instance, will hotels be able to serve residents all night? In one licensing board they might, but in another they might not. What will the hours be? We do not know. We suggest three different licences—or one licence with three differentiated parts—so that the licence holders each know exactly what they can and cannot do. We think that that would prevent all the confusion. The issue is a key problem that we have with the bill.

Michael McMahon: You think that differentiating between permitted hours, and between nightclubs and pubs, is an area worthy of consideration on its own. I agree. My experience is of nightclub owners objecting to local pubs having licences beyond a certain time because that eats into their potential takings. We have to address that type of problem. Do you think that the bill will exacerbate the situation?

Paul Waterson: As an operator, I would apply for as many hours as I could get, although I might not use them all. That is what people will do. The competitive nature of the business dictates that, if one operator has an hour, others will want that hour. If an operator shuts at 2 o’clock in the morning, others will want to shut at 3 o’clock in the morning. It goes on and on. We suggest permitted hours and recommend that local licensing boards should be able to introduce an hour’s flexibility. We suggest saying exactly what we mean by provision will only get worse. I have used the word “chaos” a few times, but I believe that chaos will ensue. There will be all these operating plans, which we will have to read to find out whether a place is a pub, a hotel, a nightclub or a snooker hall. That will create a real burden for the licensing boards.

Michael McMahon: You talked about the police being objectors. Should an off-sales be able to object to a pub? Should a pub licence holder be able to object to a nightclub?
Paul Waterson: Yes. I think that they should be able to object. The operators have an important part to play.

Michael McMahon: Will you explain why?

Paul Waterson: We have been shouting about over-provision of licences since the previous act, the Licensing (Scotland) Act 1976. Why should an operator not be able to say that they are objecting on the ground that they believe that if a licence is awarded it will create over-provision? It is up to the board to decide whether someone is being frivolous, vexatious or is just trying to protect their business.

Tommy Sheridan: Your figures on over-provision are interesting. You talk about a 50 per cent increase in the number of licences in the 22 years from 1976 to 1998, despite a fall in population. I am playing devil’s advocate here, but some would suggest that it is in the interests of your association to argue for a restriction on the market in order to protect your existing members. Do you want to dispel that view? Is yours a genuine health-motivated argument or is it a case of trying to defend the existing market?

Paul Waterson: Not only are the numbers going up, but, with the introduction of massive, so-called superpubs, the square footage is increasing. We have watched the competitive edge take over, but it has not created a better pub estate or an estate that is at ease with itself; it has created a situation in which prices have come down and standards have fallen. We need competition, but we have gone over the edge into over-competition, which is dangerous when alcohol is involved. We have watched good operators being forced out of the market in order to protect your existing members. 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.

Tommy Sheridan: The biggest signal of over-provision in any market is downward pressure on prices, which is what we have. One does not have to go a long way from here—to George Street in Edinburgh, for instance—to see new pubs opening all the time. That looks okay, but if one walks a street away to Rose Street, one sees the effect. There are problems in the Grassmarket and throughout Edinburgh. In city centres throughout Scotland, problems arise at the weekend because operators vie to attract the same people, which is not good for anybody.

Tommy Sheridan: The bill presents an opportunity through the grandfather rights issue. Your submission states that you hope for a moratorium on the granting of licences, but perhaps you guys should press for the bill to state that no more licences should be granted for five years. You say that there are already 17,583 licences in Scotland, which you think is over-provision. Why do you not use the opportunity to press for a moratorium and to argue that we should not grant any more licences for at least five years?

Paul Waterson: We have said on numerous occasions that that is what we want and that there are too many licences in Scotland. However, we should not take licences away from people. Our suggestion would not stop licences being transferred within the system. If a person wanted to open a 10,000ft² pub, they would have to acquire licences up to that—they could transfer licences within the system so that they had two for 5,000ft² or 10 for 1,000ft². Through time, that measure might lower the number of licences. However, we are not saying that people should lose their 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.

Tommy Sheridan: Tell us a wee bit more about Ireland. Is there a robust system of granting licences and has the number of licences been restricted?

Paul Waterson: The situation is a bit complex, but there have been no new public house licences in Ireland since 1902. The system has been in place for a long time. In the 1960s, licences were even bought back because it was thought that there were too many. The measure has worked there, so why should it not work here? It has not stopped the Irish business growing—the Irish pub is the most copied brand in the world.

Tommy Sheridan: We are waiting for clarification on what the Executive will do on the issue of grandfather rights—there is a big vacuum, if the truth be told—but your evidence on the matter is that no more licences should be granted, although it should be possible to transfer existing licences and rights. You do not think that licence holders should have to go through the process of gaining new licences. However, if that were to be required, what should the timescale be?

Paul Waterson: 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.

Of course we have to have grandfather rights. I would not mix up grandfather rights with the over-provision argument. It is clear that there should be a ceiling on the number of licences and no more licences should be granted in the system. We should work with the pub estate that we have now.

Tommy Sheridan: What is your recommendation for the grandfather rights system? Are you saying that people should have their licences in perpetuity? There must be some situations in which people will have to reapply under the new system of new licences.

Paul Waterson: Why should people not have a continuation of what they have at the moment? What is the problem with that? We do not want to take licences off people who have been doing fine running their businesses. There is absolutely no reason to do that. Will the new system be introduced over a three-year period—the age of a licence—or should people go on with what they have at the moment?

Bruce Crawford (Mid Scotland and Fife) (SNP): A couple of questions arise from that. First, I am interested in what you say, but I want to be clear about grandfather rights. We heard evidence yesterday that some establishments in Glasgow are one-toilet wonders. Are you saying that in this day and age we should accept a situation where only one toilet is available on a public house premises?

Paul Waterson: Some public houses have been run for years in a certain way because the physical make-up of the premises does not allow licence holders to do anything else. Are their businesses going to be taken away after 30-odd years? Many well-run pubs do not come up to every detail of building control regulations. Are we really going to tell those licence-holders that we are going to take their livelihoods away from them? I do not think that we could ever agree to that. There are other ways of making improvements.

Bruce Crawford: Tell us about that, then, because we need to hear about ways of getting some of those establishments to the required standard without closing down those businesses.

Paul Waterson: It would help if licence holders knew what system they were working to. We do not know what the opening hours will be, we do not know what the over-provision will be, we are still waiting for those details. People might then invest a bit more in their premises. If everybody knew those fundamental details, we would see a lot more investment. The pub estate has improved enormously and I think that everybody would agree with that, but there is still a lot of work to be done. We cannot engineer that through licensing law overnight; the market has to play a part in making those changes.

Bruce Crawford: My primary question is about over-provision. I am not sure that the situation is as simple as a numbers game. That is what concerns me. I have heard about the Irish situation, but one could look at contrary situations in Spain and Portugal where there is virtually no licensing and the only law is that you cannot buy drink until you are 20. Those countries have a different attitude towards drink. The issue is not just about the number of licences that are available; it is also about the density of licence numbers in particular areas. One could cap the number of licences, but the density would still increase in particular areas whereas other areas that need pubs are losing them.

Paul Waterson: Nothing is simple when it comes to over-provision. Who is to say whether four or five pubs are too many? There is no perfect situation. If we could rely on licensing boards, they could look at that density problem. All we are saying is, “Let’s start by looking at the numbers.” The numbers are there, premises could be transferred within the system and we could then rely on licensing boards to look at density problems. I cannot think of another way to do anything about the situation.

Bruce Crawford: Is there not a danger that that would divert some investment? One could end up with an internal market whereby licences were transferred and paid for between people, whereas the money should go into the products rather than into people’s pockets.

Paul Waterson: People have said that this approach is nothing but a money-making proposition and that we are only trying to give the licence some worth. However, I tried for years to come up with a way of doing all this without giving the licence some worth, but I was not able to do it. Then one day someone said to me, “So what if the licence has a worth? Perhaps that’ll make people look after it better.” There is no running away from the fact that the licence will have a worth. It might arise over a period of time, but I cannot think of any way of preventing that. However, I should point out that that is done not for the reason that you have suggested, but to protect the business.
After all, stabilising the market is the long-term solution to the problem of drinks promotional activity; banning such activity is only a short-term solution.

14:45

Bruce Crawford: I respect your position, which you accept is not ideal. What discussions have you had with the Executive about defining over-provision in such a way that the trade, and the regulators through the licensing boards, felt that it would hold water on a national basis and at least provide a standard to work with?

Paul Waterson: We discussed the matter with Sheriff Principal Nicholson, who seemed to agree with us but shoved the matter on to the white paper. In the white paper, Cathy Jamieson agreed that we had to do something, but she made no specific proposals and shoved the matter on again into the bill. The bill is now shoving responsibility for coming up with a solution on to licensing boards. As far as I know, the SLTA is the only organisation that has said, “This is what we would like.” Some have suggested that we could make an equation involving capacity, square footage and the target market. However, things start to become a bit complex. We have had discussions with everyone, but no one has come up with any solutions. Some say that it is all a matter of gut reaction and that you simply know when there is over-provision. For example, we have applauded the things that Edinburgh has achieved in the Grassmarket. It is down to the licensing boards’ discretion and we will wait and see how they carry out their assessments.

Bruce Crawford: Have those discussions focused primarily on over-provision?

Paul Waterson: The principle has always been agreed—

Bruce Crawford: Yes, but I am trying to understand who, if anyone, is putting forward ideas.

Paul Waterson: We have been going on about this for a long time and, for many years, people said that we were simply interested in closing off the market. We foresaw the problems with cut-price alcohol and with the availability of alcohol, which is a major factor in its abuse. However, when people started to see that what we had said was coming true, they began to agree and say, “Well, maybe we should look at over-provision.” In her preamble to the white paper, Cathy Jamieson clearly said that over-provision is a problem. However, although people have come round to agreeing about the principle, we diverge over how such provisions would be brought into force.

Bruce Crawford: I have one more question—or perhaps two more questions—but I will try and be as quick as I can. Would there be any value in the Executive, the licensing boards and the trade trying to find a national definition of over-provision that was not just about numbers? My concern about that—I do not know whether you share it—is that if you go on a numbers basis in those parts of Scotland where competition cannot get in because the numbers ain’t available to allow that, the people who are already involved in the market will be able to sit on their hands and not have to re-invest. That situation is different from what is happening in the city centres.

The Convener: You said that you would ask a short question, Bruce.

Bruce Crawford: I apologise, but I hope that Mr Waterson understands my point.

Paul Waterson: As I have said, there is no perfect solution to this problem, but using the numbers is the best approach that we have heard. I understand your point, and acknowledge that it is possible for what you have highlighted to happen; however, the public will make up its own mind. The market will decide where people will go within the pub estate. As a result, I really do not think that what you have described will happen.

The Convener: You have already raised your concerns about having only one type of licence. Would such an approach make it more difficult to assess whether there is over-provision? After all, the licensing board might feel that there are enough off-licences in a particular locality but would feel comfortable about, for example, granting a licence to a restaurant.

Paul Waterson: It would all be one licence under the bill, so we will all be in the hat together, but I do not understand why. The entertainment licence is a good concept, but the Nicholson committee did not understand the competitive nature of the business and made the mistake of lumping everybody together, thinking that licensees would not compete with each other. I do not understand why it thinks that. Who knows? It will be a bureaucratic nightmare when licensing boards have to decide on situations in which somebody wants a licence next to premises that are already licensed and the board has to determine what kind of premises the new licence would apply to. Why go down that road? Why even go there? Why not try to make the system simple?

Margaret Smith (Edinburgh West) (LD): I ask for a small point of clarification on what you said about a moratorium. If I understood you correctly, you said that no more licences should be granted. Are you calling for a moratorium on new licences only for public houses or are you including
premises such as hotels, members clubs and off-sales premises in large new housing developments such as that at the waterfront in Edinburgh? Are you suggesting that the moratorium should apply across the board, or simply to new licences for public houses?

Paul Waterson: There will be transfers within the system. It will be possible to transfer a licence from one area to another, so, if there was a new area in which a licence was needed, it would have to come from somewhere else. One of the problems is with hotels. It would not be right to stop a 150-bedroom hotel going ahead on the ground of over-provision.

Margaret Smith: Exactly.

Paul Waterson: That does not make the idea wrong, and we could take that scenario into account. Conversely, we do not want somebody to open a 150-bedroom hotel and stick a nightclub on the ground of over-provision.

Margaret Smith: Tourism and the licensed trade more generally have a major impact on the economy of Edinburgh, part of which I represent, so to have a moratorium on new licences for any new hotels would not be a good way to go.

Paul Waterson: That is not what we are saying at all.

Margaret Smith: Do you envisage that the moving around of licences would be based on an internal market such as that about which we have just heard, or on the licensing board passing on licences that had been withdrawn from premises elsewhere?

Paul Waterson: There is flexibility in the system, whether licences become available because of licensees going out of business, licensing going into abeyance or licences being transferred, so there is plenty of room for manoeuvre if somebody wants to open new premises. It would not stop new premises from opening; we must be clear on that. Hotels might be the one anomaly, which we could examine. However, Edinburgh has plenty of licences just now, as, probably, has the Edinburgh licensing board. Some will fall off the end, some will be sold and some people will come in with new ideas, which is how the system should work.

Mr David Davidson (North East Scotland) (Con): Some of the questions that I was going to ask have probably been done to death. When I read your written evidence, I thought that it smacked a wee bit of protectionism, but you have expanded on those comments and I understand some of the argument. However, grandfather rights present an opportunity to remove badly run and underinvested premises from the market.

You put up a defence for a traditional old harbour pub that has existed since 1705 and cannot be changed to comply with fire regulations because it is a listed building, but do grandfather rights not present an opportunity for people to come into the trade and to encourage licensees to sell their licences? If they want to transfer them as you have suggested, that would be fine, but it will not be easy to buy lock, stock and barrel a premises that has been told that it has to move from, for the sake of argument, the Grassmarket down to the waterfront. A lot of strange practicalities are involved.

What does the SLTA think about grandfather rights? Do your members totally agree that things should continue without any changes whatsoever and that there should simply be an automatic right to licences, or is there an opportunity for improvement of the estate, as you call it?

Paul Waterson: There will be changes. There will be changes in hours and there will be new licensing board ideas on a whole range of matters. What we are saying is that licences should not be taken from people because they cannot fulfil certain conditions of building control, for example, or other things. A licensee’s hours could well change. We are not saying that changes should not be introduced, but that should be done over a period of time when it is fair and timeous to do so.

You mention premises that are badly run. If premises are badly run, they should be taken care of in other ways under the new system, which we welcome.

Mr Davidson: Does the market have a role to play in that?

Paul Waterson: We are talking about licensed premises—licensed for very good reasons—and the market must be seen in that context. The market is not a free market. Its normal pulls and pushes must be controlled in some way. If we did not have a problem, we would not be sitting here. We have identified problems with alcohol abuse and other problems in the licensed business and we must attend to them. This is the time to do so. The legislation must last us a long time—it must last for five, 10, 15 or perhaps 20 years, rather than for two or three years. We must get things right now.

Mr Davidson: At the beginning, you said that you wanted the uniform application of licensing law throughout Scotland. How much flexibility in its powers does your association think that each board should have?

Paul Waterson: That depends on what you are talking about. If you are talking about opening
hours, we would like to keep the system of permitted hours. The three-licence system would be clear about when premises could and could not open, but we agree that there should be a degree of local flexibility—there could be an hour here and perhaps a couple of hours there.

On over-provision of licences, we have said that licensing boards should not have a discretionary power and that clear numbers should be set, although licensing boards should perhaps have flexibility in respect of density. I think that licensing boards will have a degree of flexibility in respect of drinks promotions because every eventuality in what operators do cannot be foreseen. If licensing boards think that something is impinging on the licensing objectives, it should be stopped.

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. Boards would therefore not have flexibility on such matters, but there should be flexibility for them to listen to objections to prospective licence holders. Those are the key areas, and a degree of flexibility is involved.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Good afternoon, gentlemen. Paragraph 9(2) of schedule 3 states:

“Tap water fit for drinking must be provided free of charge on request.”

Early this morning, I heard on BBC radio that you do not agree with that. Why not?

Colin Wilkinson (Scottish Licensed Trade Association): That matter has been given quite an amazing amount of attention. Currently, licensees must make available water and bread for travellers. We simply pointed out that the excessive costs of water charges are another big concern for licensed trade. Water is not a cheap commodity nowadays. In order for somebody to purchase a product in licensed premises, the licensee must obviously pay for the whole hospitality package. Most licensees will not charge someone for a glass of water. We just question why, among all the other problems that are dealt with in the bill, we need to legislate for such a requirement to be placed on the on-sales trade.

Paul Waterson: We are not saying that licensees should not give customers a glass of water. We are simply highlighting the fact that, these days, they incur a substantial charge for that.

15:00

Fergus Ewing: I understand those arguments and have anticipated them. However, if a charge is made, what might constitute a reasonable charge?

Paul Waterson: We would not recommend our members to charge anything for water, but individual licensees might want to do so in their own premises. However, should they then charge for ice as well? The thing becomes ridiculous.

Fergus Ewing: It is a perfectly legitimate point that water rates need to be paid for. Water is not free but subject to charge and licensees also need to pay their staff. That is the reality of the world.

Colin Wilkinson: That is why I said that pub customers pay for a hospitality package rather than a single product.

Fergus Ewing: Quite.

The Convener: I suspect that the volume of water that the average pub uses will be largely determined not by how many glasses of water it hands out, but by the amount of water that it needs for cleaning and for toilet facilities.

Paul Waterson: Water rates can be a significant amount of money. The cost even for a small pub can be £3,000 a year, which is quite a cost.

Colin Wilkinson: We do not need to legislate for tap water to be provided in pubs.

Fergus Ewing: Since this morning’s radio news item, you seem to have developed some coyness as to whether pubs should be able to make some charge for water. Can you recommend what amount a licensee who decides to charge for water should charge?

Paul Waterson: We would not recommend any charge. We were not on the radio this morning. I did not hear that news item.

Fergus Ewing: Okay. It was very early. Perhaps I should have brushed my teeth more vigorously.

My second question is on a more serious issue. Paragraph 9(3) of schedule 3 provides that other non-alcoholic drinks, such as fruit juice, “must be available for purchase at a reasonable price.”

What is the SLTA’s view on that provision?

Colin Wilkinson: We have been through all this before. As far back as 1997, our counterparts in England demonstrated in their submission to a Department of Trade and Industry investigation into soft drinks prices in licensed premises that the trade’s prices were not excessive. Comparisons with supermarket cafeterias showed that, given the average quantity of such drinks that are served in licensed premises, our charges are not excessive. In 2002, a DTI report on price marking orders highlighted the need for soft drinks prices to
be displayed clearly so that they show the quantity that is being served. We have been through all this before. It has been proved that the trade does not charge excessive prices for soft drinks.

**Fergus Ewing:** It would be easy to conclude that it would be reasonable to charge 50p for a soft drink but unreasonable to charge £5. However, between those two prices, the question whether or not a charge is reasonable is extremely difficult to answer. I am not sure whether licensees could be threatened with litigation under the provison or whether they would simply receive complaints. Do you agree with me that the provision as currently drafted is too vague?

**Paul Waterson:** Absolutely. We do not know what it means. How would you decide what constitutes a reasonable charge in a five-star hotel or in a working man’s pub on the corner? Neither of us knows what the provision is trying to get at.

**Fergus Ewing:** That makes three of us.

I want to raise one other issue, if I have time.

**The Convener:** You must be brief.

**Fergus Ewing:** In my constituency, certain licensed premises have been involved in a spate of insolvencies, which have been closely followed by the formation of new companies that employ personnel who were employed in the previous business. Usually, the licensed premises is owned or leased by a limited company, so the same people whose first business went bust have been able to set up another business. Not surprisingly, the problem for the local authority is that the insolvent business has left a large string of debts, which include debts for non-domestic rates. I imagine that your members would not support that, because it would discriminate against those who pay their business rates, which I suspect would be higher as a result. Would you favour legislative measures that aimed to stamp out that practice—difficult though it may be to achieve—which is a severe drain on government, particularly at local level, and results in an unfair competitive disadvantage for those members who pay their bills?

**Paul Waterson:** The premises licence could help in that regard, in that premises could lose their licences, rather than people. If the same people are involved, licensing boards could take a view. Some local authorities have used non-payment of rates as grounds to refuse a licence. Without knowing the facts of particular cases it is difficult to agree or disagree with that, because every case is different. It is hard to give a view.

**Fergus Ewing:** Perhaps you could come back to us on that because, like you, I think of different and difficult circumstances, but I did not know that licensing boards had used the non-payment of rates as a basis for refusing or not renewing licences. It might be useful to us in our task to have more information on that.

**The Convener:** I have a final question on fees. Do you have a view on the appropriate level of application fees to support the administration of the new licensing system? Should fees be based on the type of operation or the type of licence? Should they be based on the capacity of the operation that is applying for the licence?

**Paul Waterson:** 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 pay more than smaller places. We have taken no view on that yet, but the costs will be significant.

**The Convener:** That brings us to the end of questioning. I thank Paul Waterson and Colin Wilkinson for their contributions this afternoon.

We move straight to our second group of witnesses. Representing the British Retail Consortium we have Kevin Swoffer, who is the head of technical services, and representing the Portman Group we have David Poley, who is the director of compliance and good practice. Do both of you want to make introductory remarks?

**David Poley (Portman Group):** I do not.

**Kevin Swoffer (Scottish Retail Consortium):** Yes. Thank you for the opportunity to meet the committee. We want to share with you our experience and our proactive approach to meeting the aims and objectives of the bill. More important, we would like to say that, as retailers, we suffer from antisocial behaviour, so we welcome input on that. We very much supported the Antisocial Behaviour etc (Scotland) Act 2004 and believe that it can help our members.

**The Convener:** Thank you. We will now move on to questions.

**Paul Martin:** Schedule 3 to the bill refers to “irresponsible drinks promotions”. You might have heard questions being asked on that issue earlier. The provision specifically addresses premises where alcohol will be consumed on site, so it does not refer to the off-licence trade. Is there an argument for including the off-trade in the irresponsible drink promotions provision?

**David Poley:** 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.

Paul Martin: Are there concerns about under-age consumption in connection with the off-trade? Many of the drinks that are promoted are targeted at young people. Many of the promotions, such as a deal that offers six for the price of two, are about ensuring that people have the opportunity to bulk buy and consume afterwards. Is there not an argument that that is irresponsible? Would you say that all the promotions that are conducted in the off-trade are responsible?

David Poley: I am not saying that the off-trade is blameless and completely clean, but when there is an incentive to purchase additional quantities in the off-trade—discounts for volume—it does not necessarily mean that it will lead to binge drinking, because the alcohol is not necessarily for immediate consumption. The consumer has the opportunity to take the alcohol away, store it and drink it at their leisure over a period of time. For example, if a supermarket offers the opportunity to buy two cases of 24 bottles of beer at a discount, that does not necessarily mean that the consumer will go away and drink them all there and then. It perhaps means that they will go to the supermarket less frequently and that it will be longer before they pay a repeat visit because they have stocked up on the item. Obviously, if there was a comparable offer in the on-trade, it would be grossly irresponsible to incite people to buy 48 bottles of beer.

Paul Martin: We are talking about irresponsible promotion, which promotes the irresponsible consumption of alcohol. It could be argued that although in the on-trade some people will not take part in a happy hour, the promotion is part of getting them in in the first place. It is the same with irresponsible off-sale promotions—they are about getting people through the door. Is there an argument for a provision in the bill that refers to the off-sales trade in connection with preventing people from consuming alcohol irresponsibly?

David Poley: Something could be put in the bill, but I would not treat the two sectors in exactly the same way. There might be an argument for including something to prevent below-cost selling of alcohol, although in practice it might be difficult to enforce. People might argue that alcohol is not a suitable product for supermarkets to use as a loss leader, whereby they sell it cheaply and make up the loss that they incur on other goods that they sell. Supermarkets might be expected to present such offers in responsible, restrained ways and not as an invitation to get drunk. For example, they should not say, “Buy 24 bottles and have a very, very merry Christmas,” or something like that. A supermarket could be criticised for presenting an offer as an invitation to drunkenness.

Paul Martin: You would say that there is an argument for a provision in the bill that is not exactly the same as schedule 3, but is specific on the issue of irresponsible promotion.

David Poley: Possibly.

Paul Martin: A provision that would take into consideration the difference between the two markets.

David Poley: Yes.

Paul Martin: Should the bill also deal with the drinks to which young people are attracted?

15:15

David Poley: That might be where the Portman Group’s code of practice comes in. The Portman Group is funded by the United Kingdom’s leading drinks producers. Our member companies own no pubs or off-licences; they are just drinks producers that supply retailers.

On behalf of all drinks producers, we operate a code of practice to ensure that alcohol is marketed, named and packaged responsibly. One provision of that code says that drinks should not be named or packaged to appeal particularly to under-18s. If a drink was seen to appeal by its nature to under-18s, it could be referred to the Portman Group and an independent complaints panel would consider the complaint. If a product is found to be in breach of our code of practice because of its name or packaging, we would take action on it by issuing a retailer alert bulletin that asks retailers not to stock the product until it is amended to comply with the code.

Paul Martin: So it might help you if we found an opportunity to write such best practice into legislation.

David Poley: It would help if legislation or guidance under it endorsed and recognised our code of practice and placed an expectation on retailers to abide by retailer alert bulletins that are issued about products that breach our code.

The Convener: I will ask a bit about possibly irresponsible promotions in the off-trade. Paul Martin covered pricing. Do you have views about the location of alcohol in premises? For example, a special promotional product might be available at the entrance to a supermarket. Given the recognition that alcohol is a different type of product from the other products that are sold in supermarkets, should we ensure that alcoholic drinks are not placed at the front door or at the
checkout, where someone might impulse buy at the end of their visit?

David Poley: Our code of practice used to have a section that dealt with such retailer responsibilities, but when the code was last revised about three years ago, we took that section out to make the code simply for drinks producers.

Our code of practice used to encourage retailers to site alcohol in a separate section in a supermarket or whatever, but we concluded that that might be unduly restrictive, because most stores have a whole-store licence, so they are entitled under their licence to situate alcohol anywhere.

Stores often like to highlight offers and to place them where people enter a store, as you say, or at the end of an aisle. Stores sometimes want to tie in products with promotions that they run. If a store had a Japanese month, it might want to place sake among Japanese foods. A store might want to put a bottle of port or wine among cheeses, to create an association. We do not have a major problem with that. However, our general advice to retailers is that they should avoid situating alcohol where it might cause confusion with soft drinks. If a store has chiller cabinets, we say that alcohol and soft drinks should be kept well apart, so that people do not choose an item by mistake. We also say that stores should avoid situating alcohol anywhere near items that are popular with children, so it should be kept away from products such as confectionery.

Kevin Swoffer: I back what David Poley said. The issue is far easier for larger companies, because they have designated areas for merchandise and have sophisticated merchandising plans for stores. In larger retailers’ premises, promotions are usually situated exactly where we would want them to be—few promotions are placed outside those areas. The situation is complex for smaller premises, because specifying distances and other details is prescriptive and burdensome. However, there is a good argument for revisiting the issue to back up the information that was issued originally and to remind retailers, large and small, of where they should site alcohol promotions. That should not be over-prescriptive, but should take the form of a code of practice on promotions, along the lines of the present code of practice. The guidance should be well written and in a good form that people can understand. We should consider the matter further.

The Convener: Michael McMahon might raise this issue in more detail, but I mention the potential problem that we have identified with the delivery of alcohol products, particularly from supermarkets. Sorry about this, Michael—I will let you in in a moment. People now order goods over the internet and over the phone, which creates a potential loophole because delivery drivers might not check the age of the people who receive the goods. My question is really for Kevin Swoffer. Is there a loophole in the law and, if so, should it be closed by requiring people who deliver alcoholic goods—although if the sale was made over the phone, they might not have made it—to ensure that they do not fall into the hands of under-age people?

Kevin Swoffer: I fully understand those concerns. E-shopping is relatively new in the retail industry, but I have discussed the issue with my members, particularly as a result of the introduction of the Licensing Act 2003 in England and Wales. If orders are taken over the phone, they can be paid for only through a bank account or a credit card that is for people of a certain age. Therefore, the person is deemed to be responsible and over 18. When companies such as Tesco make home deliveries, the drivers are asked to carry out the same procedure as is carried out when alcohol is sold in their stores. The procedure is called challenge 21: if the person who receives the goods looks under 21, they are asked for proof of age, such as a driving licence, a passport or other photographic identification such as the proof of age standards scheme—or PASS—card. Major retailers take a responsible view on e-shopping.

The Convener: I apologise to Michael McMahon for stealing his core question, but he can now ask supplementary questions on the issue.

Michael McMahon: In effect, the bill will introduce a no-proof, no-sale requirement. Will that help to reduce antisocial behaviour by reducing sales to young people, or is something more required?

Kevin Swoffer: That is a complex issue. The retail industry has always advocated a national proof of age standards scheme, which is why we have been supportive of card schemes in the past and will be in the future. A national scheme would be a benefit, because it would be a controlling factor, so it would be a retrograde step not to introduce one in the bill. The big problem is that even if retailers sell alcohol to a responsible person, once it leaves the premises, its movement is beyond their control. That is a major problem, but the card schemes that have been introduced are a benefit. We advocate a national card scheme and we have given written evidence to the Scottish Executive about that. However, the bill does not prescribe a standard scheme; it calls for an authorised scheme, but it does not say which scheme would be preferable.

Michael McMahon: As Bristow Muldoon has mentioned, the purchase of drink might not be problematic to the retailer but delivery is. I am not
talking about Tesco making sales via the internet but about a corner shop off-licence developing what is known in our neck of the woods as a dial-a-drink service, where people can phone the shop and get the drink delivered in the same way as they would have a Chinese meal delivered.

There is a gap in the legislation. The Nicholson report that forms the basis of the legislation did not address that issue because it was a phenomenon that we were not aware of at the time. Should the bill be tightened in some way to address that new way of retailing alcohol, which is one by which young people can access alcohol without physically going to the premises in which it is sold?

Kevin Swoffer: I see no difference between the systems or procedures that should be in place for the sale of alcohol over the telephone or the internet and those that should be in place for a face-to-face sale in a store. We advocate having in place the same systems and procedures that are in place in retail outlets for sales within the control of such premises. That is the guidance that is in “Responsible Retailing of Alcohol: Guidance for the Off-Trade”. We would want that best practice to be pushed across every mode of sales within each operation.

The Convener: You mentioned Tesco’s good practice in that regard. Could you give us a briefing note to let us know what guidance a range of your members give to delivery drivers and what protocols they have in relation to that type of sale?

Kevin Swoffer: Yes.

Michael McMahon: You might not be able to help me with the subject of my next question but it concerns a matter that has been brought to my attention.

There is now a market for limousines, for example to take out parties of young people on a Saturday night. Apparently, limousine hire is dealt with under the taxi-licensing regime but, of course, those limousines can carry alcohol. Can you give us any advice on how we could tighten up the legislation to deal with the provision of alcohol to young people in such vehicles?

Kevin Swoffer: That is an interesting question. I have not thought about the issue before but, a few weeks ago, I said goodbye to my son as he and his friend set off to central London in a limousine for a 21st birthday party. They had a couple of girls and a cabinet of drinks in the car, so I was quite envious, but there you go.

The situation is no different from that of a company that sells drinks over the bar on a pleasure cruise on a weekend afternoon. Both situations concern a bar in a mobile retail unit. If there are persons under the age of 18 in the car, in the interests of the responsible sale of alcohol, the mobile bar should be licensed in exactly the same way as the one on the boat would be.

Michael McMahon: Should that be brought within the ambit of the bill?

Kevin Swoffer: I think so, yes.

Dr Jackson: Yesterday, at the informal evidence-gathering session in Glasgow, we were talking about licensed premises and the fact that it might be helpful to have a penalties system to deal with premises that are not well run.

The Scottish Executive’s policy memorandum talks about the dangers of under-age drinking, which we all know about. It highlights a study that points out that the most common source of alcohol for youngsters—some as young as 12 or 13—is the small licensed grocer or corner shop.

We have heard about the difficulties that can arise in connection with supermarket deliveries and you have spoken about a code of practice in that regard. I have three questions on the matter. First, do you think that a code of practice will be sufficient? Secondly, how would it be enforced? Thirdly, could penalties be applied to off-sales in the same way as people suggested they could be applied to on-sales at the information-gathering event yesterday?

Kevin Swoffer: It is pertinent to consider all aspects. One of the things that the bill will do is to bring people together from the point of view of communication, so that offending premises can be dealt with fairly swiftly and adequately using the proposed measures. Sanctions and penalties have their place within that framework. As I said, once alcohol has left our premises, it is difficult for us to judge where it is consumed. However, any responsible retailer would want to work within the framework to ensure the responsible consumption of alcohol. When communities, off-licences, retail outlets and supermarkets get involved in local forums, there is much more two-way communication about issues in the local area. That is one of the benefits of the local forums working with communities. Part of that is policing and we advocate stern enforcement as a deterrent to irresponsible consumption of alcohol.

Dr Jackson: Should the bill mention explicitly the development of a code of practice and penalties for off-sales? How would that be incorporated in the bill?

I have considered forums in more detail since I put the following question to the previous panel earlier this afternoon. If there were one licensing board for a council area, there would be only one forum. Although there would be other
representatives from the community on that forum, only one member of the public might be represented. Would such forums be as effective as you suggest?

Kevin Swoffer: If one looks at the England and Wales model for applying for, advertising and granting licences and for transitions and variations, one finds true public consultation in local areas because information is placed in the public domain. If one wants to object, there is a mechanism by which views can be fed in. It is important that forums are seen to work closely with local communities and that retailers can be part of that process.

On how we can push for the development of a code of practice, David Poley rightly alluded to the guidance that will support the bill. We have produced our own code of practice, which we have pushed very hard. We are also producing an age-restricted sales booklet specifically for Scotland that will include sections that relate to the bill and which will be available in the next few weeks. To ensure that the public know about the bill, it is incumbent on us all to provide high-level publicity and public relations—information to tell the public what the bill will mean. That is important and is one thing that has not been done well in England and Wales. The licensees seem to know what is going on, but there is misunderstanding among the general public about the aims and objectives of the Licensing Act 2003. There has been much speculation in the media about 24-hour licensing, and that has been mixed up with different messages about which the public are becoming confused. There is a good argument for making the aims and objectives of the licensing legislation more public.

Dr Jackson: It would be useful for us to get the information about the code of practice. You mentioned consultation with the community in England and Wales, but is the situation there the same as what is envisaged here, which is that if there is one licensing board for one council area, there will be only one forum?

Kevin Swoffer: In Scotland, the process is far more open. In England and Wales, there are no such forums to be had; licensing boards are very much part of local authorities and information is pushed out to the public in the form of notices and newspaper advertisements. There is little public consultation in England and Wales.

Bruce Crawford: I have a couple of questions about under-age drinking. I appreciate your organisation’s continuing work on codes of practice and so on, although I am not entirely convinced that all the large operators are necessarily doing the job in the way that you think they are. A lot of agency purchase by those who are involved in passing on alcohol to people who are under age is done through supermarkets and off-licences. That is a fact of life, and I know that you are doing what you can to help to stop that. I leave corner shops to one side for a moment, but what do you think of the idea of people who sell alcohol in supermarkets having to have a personal licence? The designated person need not be at a designated till, but they would be required to ask all purchasers of alcohol to give an undertaking that it will not be sold to someone who is under 18. It would be a bit like when one checks in bags at an airport; individuals would be asked whether the alcohol is intended for sale to someone who is under 18, so that there would be a check mechanism at the point of sale at least.

The Convener: You just want someone to ask you for proof of age.

Bruce Crawford: What I am starting to get worried about is people asking me whether I am over 60.

Kevin Swoffer: You are absolutely right. We have always been concerned about the control of alcohol once it has left our premises. We must be careful when we talk about the level and scope of training of operators in the retail industry. 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.

We would expect a certain level of training to be in place. In the major retail companies, a high level of in-house training for supervisors—and, indeed, all staff—is prevalent. In relation to the Licensing Act 2003 in England and Wales, we have been talking to the British Institute of Innkeeping about the publication of a retail-focused training pack for members of the British Retail Consortium and thereby the Scottish Retail Consortium. A retail-specific publication is being drafted and will be placed into retail companies’ domain. Our member organisations will be given a common message that matches the syllabus for the formalised and accredited training programmes in a form that they can adapt to use in their in-house training packages, so we will see the same message in Sainsbury’s, Tesco and Asda. We are working on that at the moment.

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.

Bruce Crawford: I can understand that cost is an issue for you, but we have to balance that against the social cost to the community of alcohol finding its way into the hands of under-18s, or indeed of under-18s managing to buy it straight from the till. I would ask you to reflect on my question whether everyone who is buying alcohol should be challenged about whether they are selling it on to someone under 18. If we do not have a system under which everyone who sells alcohol has to have a personal licence, should those who sell alcohol not at least be certificated to do so after going through a formal programme of training and be 18 or over themselves?

Kevin Swoffer: I talked about cost, but the cost also relates to practicalities. The turnover of checkout staff within the major retail operators is extremely high, although staff receive an element of in-house training before they work on a till. You talk about accredited training schemes and accredited certification, but we have got to be careful to define the scope of that training. I have been on training courses and know that up to 12 hours' training are required to gain an accredited certificate through one of the awarding bodies. Lower-level training, with perhaps an hour's training as part of a formalised process in which retailers could be accredited training providers, is an area that we could investigate further. However, I stress that the issue is not just cost but practicality and how operations work. We would do whatever we needed to do to have that in place, but the major retailers are convinced that their in-house training processes and programmes cover the current problems with the sale of alcohol to people who are under age.

Bruce Crawford: It is self-evident on the streets that—for whatever reason—alcohol is getting into the hands of young people and that much of it is sourced from large supermarkets. That is a reality, so we need to do something. However, I welcome the fact that you are prepared to consider my suggestion. There is no reason why that sort of idea could not be in your code of practice. Someone suggested earlier that if it was built into the bill, it would give that suggestion some authority. However, you have still not reflected on my idea of challenging people who are buying alcohol on whether they are selling it on to under-18s.

Kevin Swoffer: I was going to move on to that. That question has not been thrown at me before, and it is an interesting one. If someone is going to give an under-age person alcohol, I wonder whether being challenged at the point of sale by a checkout operator would change their attitude. It might make that person stop and reflect, but would it really stop them providing alcohol to an under-age person? I am yet to be convinced.

Bruce Crawford: So am I. I will ask one more question about test purchasing, which is available for cigarettes and other products. How would the Scottish Retail Consortium feel about test purchasing being applicable to alcohol sales?

Kevin Swoffer: England and Wales have had test purchasing of alcohol for a number of years, and we would welcome it in Scotland because it indicates that we have nothing to hide and indicates our sector's status and performance to the enforcement authorities. Anything that can give the politicians, retailers and legislators confidence that the legislation is working or indicate to them that it is not working, which is just as important, is a good policing mechanism.

The Convener: David, I think that Bruce has well and truly nicked all your questions this time, but if you have a supplementary, you can ask it.

Mr Davidson: He has not quite nicked them all; I will ask what the Scottish Retail Consortium thinks of the bill's provisions on training. Kevin Swoffer has concentrated on off-sales in supermarkets in his response, so I ask him to distinguish between the training that is required in on-sales and off-sales, as the consortium has members in both sectors. Is there any difference in the mandatory training that is needed in the two sectors?

Kevin Swoffer: I will try to give a personal answer to that. I have gone through training for the licence holder qualification as part of the BII qualifications. It is interesting that previous speakers talked about differentiating between entertainment, off-sales and on-sales in the premises licence. Because the Licensing Act 2003 in England and Wales is all-encompassing, the training syllabus for the licence holder qualifications is quite large—it covers a number of things. Twelve hours is quite a long time to train and, even with case studies, it is difficult to keep people's interest in that training programme. Because the qualification is for personal licence holders, it allows a qualified person to sell alcohol in a public house, an off-licence or any licensed premises. Therefore, some sections of that syllabus might not be as pertinent as others to somebody who is going to be in the off-trade all their working life. If there is anything to be learned in Scotland from the model in England and Wales, it is that a more focused training syllabus for the
specific sectors is important and should be considered.

Mr Davidson: Do you and your different organisations consider that a suitably qualified person must always be available at the point of sale? A personal licence holder might not be on the premises all the time, because they might go off to have a meal, for example. Should it be mandatory to have somebody who is suitably qualified or certificated available to supervise sales?

Kevin Swoffer: That has been a major complication in England and Wales, where there has been a great deal of controversy about the interpretation of the Licensing Act 2003. There are some lessons to be learned from that in Scotland.

In most instances in a large retail operation, such as one of the larger supermarkets, the licence holder or a designated premises supervisor who has the qualification will be on site at all times. The larger retailers ensure that their duty managers also have those qualifications, because of the turnover in management moving round the organisations, so it is not particularly an issue for the large retailers.

It is far more difficult for small retailers. Without having a number of trained and registered operators, it would be extremely difficult for a licence holder who runs a small grocery shop that sells alcohol to ensure that if they happened to go out for the day, go on holiday, go off on long-term sick leave or even have a few hours off, somebody with the appropriate qualifications would be on site at all times. Small operators would find it extremely difficult to say, hand on heart, that they would have somebody who has the formal accredited licensing qualifications on site at all times. In a small retail outlet in which only two people work, the licence holder would have to be out of the premises for only a very short period of time for the business to be non-compliant. That would not mean to say that the person who has been retained in the store has not been given the responsibility and has not been trained adequately to prevent the sale of alcohol to under-age persons.

David Poley: From the point of view of the Portman Group, because our member companies do not own any licensed premises themselves we have not been sufficiently involved in the licensing debate and the detail of licensing in England and Wales or in Scotland to have a view on the issue.

The Convener: I know that some of Tommy Sheridan’s questions have been covered, but if he has a supplementary question he should by all means ask it now.

Tommy Sheridan: I have been lip-reading apologies from across the room for interference on

my turf, so to speak. I apologise if such an evidence session has already been organised but, given that both sets of witnesses so far this morning have referred to England and Wales, will we hear evidence about the situation in England and Wales? Both sets of witnesses have referred to matters that I am interested in.

The Convener: We will discuss that later.

Tommy Sheridan: I just wanted to flag that up.

The policy memorandum indicates that alcohol in Scotland costs our national health service £110 million a year. It is implicated in three quarters of violent crime in Scotland and it costs society as a whole £1.1 billion. Do you both accept that alcohol is a specific and unique product and that it is different from other products that are on the shelves in supermarkets?

David Poley: Absolutely. It is a special commodity. It has to be treated differently from other commodities for that reason and because it is a psychoactive substance when consumed in excess and is capable of causing harm. That is why there are special rules that relate to all sorts of issues, such as who can sell it, who can buy it and the way in which it should be promoted.

Tommy Sheridan: Would you support the placement of warning signs on products and within outlets?

David Poley: We are not in favour of mandatory warning signs. Our member companies and a number of other drinks companies have started voluntarily putting alcohol unit labelling on bottles and cans. A little symbol is put on labels stating how many units of alcohol the product contains. Towards the end of last year, the Portman Group also instigated a website, www.drinkaware.co.uk, which carries Department of Health-endorsed information on sensible drinking. Pages are tailored for all sorts of different groups, whether it be people who are pregnant, the old or the young. A number of our member companies and other drinks companies are starting to feature that website address on their packaging and on their advertising so that consumers are directed towards a source of comprehensive information on the risks of alcohol misuse and so on.

Tommy Sheridan: It is not stated on the product, “Excess consumption of this product can lead to serious health problems.”

David Poley: No. Some companies choose to put on some sort of message like that or perhaps a general message such as, “Please drink responsibly.” However, generally speaking, such messages are not put on packaging voluntarily. One reason for that is that the message about alcohol is obviously more complex than the message about tobacco. The message about
tobacco is simple: we can say that every cigarette is harmful to health and that people should not smoke. The message about alcohol is more complicated because alcohol is harmful only if people drink to excess or in the wrong situation, and there are positive health benefits for certain groups if they drink moderately. As it is impossible to get all that information across on a label, if we had just one little soundbite, that might misrepresent the situation. That is why we favour directing people towards a website that contains full information. There is scope for the trade to support the website and the educational initiatives of our member companies by displaying the drinkaware website or by having information available for distribution at the point of sale. Some supermarkets are starting to do that, but more such measures would be welcomed.

Tommy Sheridan: Given that we are talking about a substance that can be dangerous if used irresponsibly, do you accept that we should have separate points of sale in supermarkets or try as much as possible to separate general food sales from alcohol sales?

David Poley: We talked about that issue earlier, when I mentioned the difficulties that arise because supermarkets sometimes want to highlight offers or build on associations between alcohol and other products, where there are relevant tie-ins. As a general rule, we discourage retailers from siting alcohol in totally inappropriate places, such as among children’s products.

Tommy Sheridan: You discussed the issue earlier with Paul Martin, but my point is that although you admit that we are talking about a unique and special product that is dangerous when misused, you accept that it should be sold with milk, bread and eggs. If there were no problems with alcohol, that would not be a problem, but given the present level of consumption, should we not try to make it less convenient to buy alcohol?

David Poley: We should not make it less convenient to buy alcohol, but we need to ensure that people are not confused when they buy it and that alcohol is not targeted inappropriately at under-18s. We must also ensure that, as far as possible, people who buy alcohol are aware of the dangers of alcohol misuse, but that does not mean that we should go as far as making it more difficult for people who are over 18 to buy alcohol.

Tommy Sheridan: Would it be misleading to have a general label saying that excess use of alcohol can damage health?

David Poley: Are you talking about information at the point of sale?

Tommy Sheridan: I am talking about on the products, the makers of which you represent.

David Poley: Right—you mean a label on packaging.

The Convener: I have a supplementary point on Tommy Sheridan’s line of questioning. Some retailers, such as the Co-op, have started to produce warning labels. From memory, they say that consumption above a certain number of units per day can be harmful to health—not that all consumption of alcohol is harmful to health but that over-consumption could be. If one major retail group can adopt that scheme, I cannot see why it would be harmful to the interests of other groups to go down a similar route.

David Poley: I have no objection to that, but it is perhaps more appropriate for the Scottish Retail Consortium to comment.

Kevin Swoffer: The Co-op’s initiative is to be applauded. The issue is one on which the British Retail Consortium and the Scottish Retail Consortium can get members together to start talking with groups such as the Portman Group. The BRC sits on one of the Portman working groups and endorses its code of practice.

We must be careful, in that we must be mindful of other pieces of legislation. There is no problem with voluntary advice at the point of sale, leafleting and so on. We can look carefully at that idea and encourage it, but when we start to talk about product-labelling requirements, we move into the area of other, non-voluntary legislation. We can certainly investigate what can be done on a voluntary basis in England and Wales and Scotland.

16:00

Tommy Sheridan: Sylvia Jackson has already made this point to both of you, but the evidence that is before us shows that 33 per cent of all alcohol that is bought by those who are under age is bought from small licensed grocers. There is a problem with the level and type of sales and we must do anything that we can to address that, for example by attaching health warnings or making test purchases. The industry must do more to recognise that we have a dangerous product; just as cigarettes are dangerous, so is alcohol, but you are not indicating that on the product. That is why I raise the matter.

The Convener: I think that the witnesses have already given their view on the issue, so I draw this session to a close. I thank David Poley and Kevin Swoffer for their evidence and their participation this afternoon.

We move on to our third panel of witnesses. Representing the Coal Industry Social Welfare Organisation is Ian McAlpine, and representing the National Union of Students Scotland are its...
president, Melanie Ward, and its director, Keith Robson. I invite Melanie Ward to make an introductory statement.

**Melanie Ward (National Union of Students Scotland):** Thank you for inviting us to speak to you today about the Licensing (Scotland) Bill. We welcome the publication of the bill and we support the five key licensing objectives that it outlines. Obviously, it has been developed over a significant period of time and NUS Scotland played a full part in the consultation that was run by the Nicholson committee and the subsequent consultations. We also encouraged our member unions to play as full as possible a part in those consultations.

We take this opportunity to highlight the unique nature of student associations and to point out that providing bars and licensed premises is only a small part of what they do—it is not their main function and it is not their sole reason for existence. Their premises are often used for many different activities and the motivation for having them is to provide a safe place for students to socialise. Student associations operate in unique circumstances in that most of them are open for business for only 30 to 32 weeks of the year, in contrast with the majority of licensed premises. Student associations are non-profit-making organisations; any surplus that they make goes back into the campaigns that they run and into provision of welfare services, clubs and societies and other services for students.

Unlike the majority of licensed premises, student associations are run by trustees who are elected by their fellow students, normally in a college or university cross-campus ballot. Student associations are not run by sole individuals or by shareholders. Many student associations in Glasgow and Edinburgh are represented on their local licensing fora, in which they take the opportunity both to play a full part in the operations of the licensing trade and to highlight the different and unique ways in which student associations operate.

Student associations have a record of running campaigns to promote safe and responsible drinking and to encourage people to take care when they are out enjoying themselves, so we welcome the extension of those values to other providers of alcohol and social facilities. For a number of years now, NUS Scotland has collaborated with other organisations, such as Alcohol Focus Scotland and ServeWise, in running national campaigns on safe and responsible drinking.

Finally, we welcome the fact that the bill includes provisions on registered clubs. We hope that those will encompass student associations, but we are seeking clarification on that from the Executive.

**Ian McAlpine (Coal Industry Social Welfare Organisation):** Good afternoon, everyone. On behalf of CISWO Scotland, I welcome the opportunity to contribute to the committee's discussion.

As the umbrella body for miners' welfare schemes and as a member organisation of the Committee of Registered Clubs Associations—the umbrella body for umbrella bodies of registered clubs—CISWO is particularly interested in the bill's impact on registered clubs. We agree with the bill's objectives of creating a modern, simpler and more flexible licensing system for Scotland and of tackling alcohol abuse head on. However, we sincerely request that the Scottish Parliament and Scottish Executive protect the special status of registered clubs under the new licensing system.

The bill will bring clubs into the same licensing system that applies to pubs and hotels rather than continue the separate system of registration with sheriffs. We generally accept that that makes sense, but the different nature of members clubs must be recognised. A club is a private association of people who have common interests or purposes. Those might be sporting, social or charitable purposes. Clubs are not run for commercial purposes like pubs or hotels, but are voluntary associations that are often at the hub of a community. They are not commercial enterprises.

Given that registered clubs throughout the country continue their sporting, social, community and welfare activities quietly and without detriment to licensed premises, the basic human right to form such a club should not be detracted from to a greater degree than is necessary to achieve the licensing principles. Clubs are private and do not compete with licensed premises for passing trade. As the sale of alcohol is ancillary to their main purpose, the bill should not aim to make them just like pubs. A club's members are entitled to have their club run in the way that they intend and that right should not be prejudiced by licensing requirements that go further than is necessary to achieve the licensing principles.

Clubs that are properly run operate far more tightly than pubs. Members are subject to the rules of the club’s constitution and they are under social pressures from other members to behave properly. We feel that antisocial behaviour is not an issue in registered clubs.

I stress the special nature of members clubs and emphasise that they are not open to the general public for the sale of alcohol. That needs to be properly highlighted in the bill to avoid confusion and to prevent opposition from people in the licensed trade and elsewhere who consider that registered clubs compete unfairly with ordinary licensed premises.
The Convener: The bill will extend the general licensing system to members clubs, which currently have a separate registration process. You appear to accept that as being a valid way forward while still expressing concerns that the licensing system should not become too onerous for clubs. Are there specific areas that you are concerned could cause difficulties for private clubs?

Ian McAlpine: There is a need for proper clarification of various matters, such as the question of how guests are dealt with, about which there have from time to time been grey areas or confusion. Much of the relevant legislation was put in place years and years ago when society was significantly different. In a registered club—in which, as I have already said, the sale of alcohol is ancillary to the main objectives—alcohol is provided for members and their bona fide guests. That is accepted as being fair and reasonable because if it were not like that, clubs would simply operate pretty much like pubs.

It needs to be made clear that a bona fide guest of a member is allowed to purchase a drink—it would be rather inappropriate to suggest otherwise. There is also a requirement to sign in bona fide guests, which is fair and reasonable and should continue. However, as I said, the sale of alcohol is not the primary purpose of many of the clubs that we collectively represent. Often, they have many different activities; for example, miners' welfare schemes often work in partnership with the Scottish Executive to tackle social exclusion by organising community activities for young and old people and they even link in with after-school clubs and so on. Such activities are not in any way related to the sale of alcohol. Therefore, the certificate of registration should relate specifically to any sale of alcohol rather than to general use of the premises.

The other point relates to over-provision. As I have said, private registered clubs do not compete with licensed premises for passing trade and the sale of liquor is ancillary to clubs' main purpose. Therefore, the inclusion of club licences in the overall provision calculation could prevent establishment of commercial premises that might be needed in a particular area. It is therefore important that the bill ensures that registered clubs are not included in a local licensing board's calculation of over-provision of licences in an area.

I get the impression that that is the general intention.

Mr Davidson: Both written submissions raise questions. Ian McAlpine has talked about some of them specifically, so I would like to direct my questions to the NUS. Section 5 of the NUS submission deals with the consequences of the bill's enactment. Could you be a bit more specific about your concerns? We accept that you accept the provisions and aims of the legislation, but what do you think about the practical considerations, given that many members of student unions will be under-age and there will be issues of responsibility with regard to the management of the bits of the establishments that are licensed.

Melanie Ward: You are right to suggest that many union members are under-age. That situation is, in many respects, unique to Scotland. Student unions tend to be extremely strict about enforcing the rule that a person has to be over the legal age to consume alcohol on the premises. At all student unions it is necessary for people to show identification that proves that they are students and are eligible to get into the club in the first place. In the vast majority of cases, that identification has a date of birth on it. If someone below the legal age was found to be consuming alcohol or if someone was buying it for a person who was under-age, the student unions tend to have their own disciplinary procedures whereby the person who is caught doing that is brought before a panel of other students and excluded until they are 18. Those rules tend to be strictly enforced. Make no bones about it: student unions take such cases very seriously.

I will address some of the consequences of the bill; I will give an example that is related to the proposal whereby a person would have to be a properly trained member of staff if they are to work in an establishment for three months or more. 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.

Keith Robson (National Union of Students Scotland): The heading “Consequences of the Bill’s enactment” sounds rather grave, but that is one of the areas in which we were asked to make a representation, so we went with that. Training of staff is an issue that we take seriously. We see it as an opportunity for student unions to help students who are staff members to develop their skills as well as to give them employment.

Like many organisations, we were concerned about the lack of detail in the bill and wonder what its implications will be for student associations and many other organisations. As we said in our
submission, we do not see training as a burden: we see it as a developmental opportunity, but we would like to know whether we are on a level playing field.

We have supported the process throughout. We support the five licensing objectives and in many submissions to Parliament we state that we view students not only as students but as citizens. We support the proposals, but we have a different operating environment. The issue is not necessarily about pricing of alcohol, although it is linked to it. Some of our members would prefer a minimum pricing route, although I know that the Executive is not keen on that.

The suggestion is that there be a 48-hour rule. Unfortunately, we had our national conference in Blackpool last week, so I was unable to attend the meeting with some of the general managers who discussed the bill and fed back some of their concerns ahead of our giving evidence this afternoon. They came up with a suggestion. I do not deal with the matter on a day-to-day basis, so members will excuse me if I cannot work them through the suggestion properly. Those managers suggest the possibility of a seven-day rule rather than a 48-hour rule. Their view is that the larger pubs, clubs and nightclubs have the capacity to heavily discount their drinks for 48 hours during the week to target particular markets and can make up the money at the weekend, whereas student unions exist primarily to provide a range of other services—as Melanie Ward pointed out—and alcohol is only one part of the focus, so the bill’s impacts will be different on student associations to what they will be for other clubs.

As Melanie Ward pointed out, we are keen that registered club status remain. I was told that that was in the Licensing (Scotland) Act 1976—I tried to search on the web for it, but could not find a copy. Some of our members would like legislation to refer specifically to student associations as being registered clubs, but we accept that that is not necessarily the way the Executive works.

We want some clarification on the premises licence. From our reading of the premises licence, if there were operational plan changes to staff, student officers or volunteer offices we would not have to go through the licensing board to have those changes approved. From my reading of the evidence that was given by the Scottish Executive a couple of weeks ago, it seems that it is correct to say that we could go ahead and make such changes without having to go to the licensing board, but we would obviously like clarification. We are keen to develop matters such as training, and to work with the Executive on guidance so that all our members know where they are and can be confident in helping to implement the legislation as best they can.

**Mr Davidson:** CISWO acknowledged in its evidence that clubs should be family friendly. For example, football clubs for young people often involve families. To an extent, the issue also applies to student associations. CISWO suggested that the law should be changed so that guests, if signed in appropriately, are entitled to purchase alcohol, which is not the case in clubs scattered throughout the country. Are there any measures in the bill that would disadvantage your members or which you would like to have clarified or changed?

**Ian McAlpine:** The Nicholson report recommended that children should be admitted to licensed premises unless they are excluded by the operating plan for the premises. However, it now appears that specific consent to admission of children will be required, which is fair enough, as long as consent is given when clubs wish it. As I said, many clubs are community facilities that are used by people from several age groups, but the existing restrictions make it particularly onerous for the dedicated teams of volunteers who manage the facilities to stay within the letter of the law. It is heartening to know that there will be a fresh look at the issue with the aim of allowing facilities to be more family friendly. The appropriate restrictions in relation to children and the sale of alcohol will then be down to the operating plan.

**Mr Davidson:** Is there a difficulty with one-off occasions, such as gala days, which will have to be put in the annual plan in advance? Should there be more flexibility on that?

**Ian McAlpine:** I am pleased that you raised that issue. The issue applies, for example, to a children’s gala day in a mining community where the main community base is the local registered club, although such days are held throughout Scotland, not just in mining communities. It is appropriate for the bill to allow such occasions to take place as long as they are in the operating plan. The issue is about regulation to avoid abuse. In an ideal world, there would be no requirement to specify such occasions in the operating plan, but a case can be made for requiring specific occasions to be highlighted—that is better than putting a host of restrictions on premises, which might not allow them to hold genuine events.

**Melanie Ward:** Student associations often have end-of-term events and end-of-exams parties, but it can be difficult to know a year in advance exactly when they will happen. It would be helpful to build in a little flexibility for genuine events.

**Bruce Crawford:** On that specific point, if the operational licensing plan could include a request for, say, half a dozen ad hoc extensions to the licence a year, that would give a bit of flexibility.

**Ian McAlpine:** I hope that there will be a facility to do that in the operating plans. However, we do
not want to get dragged into a host of bureaucracy and different systems—that is what we are trying to get away from through a commonsense approach.

Melanie Ward: That suggestion would be suitable, but we would need flexibility with regard to dates, because it can be difficult to know the dates in advance.

Michael McMahon: Melanie Ward has given a comprehensive answer on the NUS’s perspective on training, but I ask Mr McAlpine to discuss the implications of the requirement for training for staff who serve alcohol.

Ian McAlpine: CISWO believes that that requirement is a positive thing. We spend our lives encouraging best practice, and if a requirement for specific levels of training was tied in with the legislation we would support it. The question is about how to strike the appropriate balance. For example, the person who is ultimately responsible for a bar will require significantly more training than a casual part-time employee. As long as the balance is fair and reasonable, such training is to be encouraged.

Michael McMahon: What are the cost implications?

Ian McAlpine: Again, that is a question of striking the right balance. It is only fair and reasonable that the person who is responsible for a bar, with all that that entails, be properly trained. The answer comes down to the detail on the level of training, but we still do not have information on that. I support the general thrust of the proposal to put in place a requirement for training.

Michael McMahon: Does the NUS have a view?

Keith Robson: As the previous panel highlighted, the issue is about not just the cost but the practicalities. Some student associations employ permanent staff, some employ students and some have a mix of staff and students. Students might not be able to attend what might be considered a normal training session from 9 to 5, 9 to 1 or 1 to 5. We are looking for variability and flexibility of delivery in relation to times and methods—that might include one-to-one training. The issue is not just about cost, although cost is a consideration for any organisation.

As we pointed out earlier, we support training for a number of good reasons, but there are practical issues around its provision. The more detail we have, the more we will be willing to work with an expert group, the Executive or others to talk the matter through to ensure successful implementation.

Michael McMahon: In general, students nowadays tend to have part-time jobs for at least some hours each week. If they work in a supermarket or a call centre, they are trained. Why should they not get training—

Keith Robson: We are not saying that students should not get training. The point is about ensuring that as many students as possible get training. That might depend on employers. The perspective of student associations might differ from that of large licensing consortia which, as we mentioned earlier, might use the three-month rule and decide that it is only worth employing a person for two and a half months. We would not defend the suggestion that students should not get training. There are many good developmental reasons why students should be trained. My point was about recognising the need for flexibility in training. If training is on a set number of Wednesdays over a couple of months in Glasgow city centre, students might be in class. They might work in a bar from Monday to Friday, on Tuesdays and Wednesdays or whatever, but they might have other commitments as well.

Melanie Ward: There is also an issue about who provides training. If a union’s bar supervisors or managers can be trained and then train their staff themselves, there will be no problem because they will be able to fit in the training around their staff. If staff have to go away to attend a training course, that might cause problems. We are not saying that students should not be trained, but that in training them we must take those issues into account. We must also consider cost issues, but we have been working with various organisations to look for ways to overcome the cost barriers.

Ian McAlpine: I agree. I was going to make that point, but it has been covered.

Dr Jackson: Training is important. Did NUS Scotland mention in its submission to the Executive the point about the need for flexibility and different methods of training?

Keith Robson: Flexibility was not mentioned specifically in the submission, because we had only four pages into which to cram as much as possible. We thought to raise the matter today; we are willing to work with the Executive on any issues that arise. Members will see from our submission that we have a scheme called best bar none, which was originated by Greater Manchester police and for which there has been a pilot for the past year. The first annual awards were held at the NUS Services Ltd convention last month and a number of honours were given to student associations, including three or four from Scotland. We are looking to roll that out nationally—to use the jargon—as it promotes good practice. We are committed to training.

Melanie Ward: That is an important point. Especially in recent times, student associations
have taken a more professional and responsible approach to student drinking and provision of safe places in which students can socialise. Many other licensed premises do not have such responsibilities or do not take them seriously. We welcome the fact that the bill will encourage them to take those responsibilities seriously.

16:30

Paul Martin: Irresponsible drinks promotions are dealt with in schedule 3 to the bill. Arguably, the pricing policies of clubs and student associations encourage irresponsible drinking. It is well known that the price of alcohol in clubs and student associations is not only marginally cheaper, as has been claimed, but substantially cheaper than in other establishments. If the bill bans irresponsible promotions, will more students end up in the student association where drink will be at its cheapest?

Ian McAlpine: In my 20-odd years of experience with registered clubs, significant antisocial behaviour resulting from alcohol abuse has not been an issue. Registered clubs are in the main well controlled. Peer pressure from other members means that people who misbehave through excessive drinking are normally brought before a management committee and reprimanded. Such misbehaviour can lead to either suspension or loss of membership. Because of the careful management structure that private members clubs have in place, we do not get that kind of abuse.

Paul Martin: If the bill seeks to tackle antisocial behaviour by ensuring that the opportunity to offer irresponsible drinks promotions is withdrawn from all pubs and clubs, will those who are looking for cheaper alcohol end up in the students association and private clubs? I just pose the question.

Ian McAlpine: The reality is that a bar within a registered club does not exist for commercial benefit but is ancillary to the club’s main activities. Such bars exist to generate a surplus that is used to maintain the club’s facilities and to support its sporting, recreation, welfare or other activities.

Paul Martin: Does no one go to the rugby club for cheaper alcohol? Do they all go only because they support rugby?

Ian McAlpine: More often than not, people will join a rugby club because they like rugby and want to socialise with like-minded people.

Paul Martin: Do they all participate in, or are they all spectators of, rugby? Does everyone who joins the bowling club play bowls? I just want to pose the question whether people might not move from one alcohol provider to another that is a source of cheaper alcohol. Is that a possibility?

Ian McAlpine: It is rather inappropriate to lump in registered clubs with pubs and give them the same format for the sale of alcohol. The two are entirely different.

Paul Martin: Do people not abuse alcohol in clubs?

Ian McAlpine: Not as much. It is unusual for that to happen. When such abuse occurs, it is usually dealt with quite vigorously under the terms of the club’s constitution.

Melanie Ward: In my view, student unions have traditionally provided alcohol as cheaply as possible to students for two main reasons. First, students do not have much money and cannot afford to pay the £4 or £5 for a glass of wine that is charged in some places. The need for a lower price is one element. The second reason is to keep students in student associations because, particularly in recent years, we have seen large pub companies going after the student market and taking it away from student associations. If student associations do not compete, they will have nobody in their bars and will be unable to make a surplus to support other activities.

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. We support coming down on irresponsible drinks promotions and binge drinking, but we do not want student associations to be unfairly targeted. We want to ensure that there is a level playing field.

Paul Martin: My question for Melanie Ward is the one that I asked Ian McAlpine. People will be moved from one place where they abuse alcohol to another. Students will be able to say, “Here’s an opportunity for cheaper alcohol. I will consume as many units as possible in the student union and then move on to a nightclub.” All we will be doing is scrapping drinks promotions in one place and moving them to another. Is it not a fact that people go to student unions because the alcohol is cheaper, which provides an opportunity to consume more?
Melanie Ward: People go to their student union for many different reasons. Student unions vary hugely. Unions such as those at the University of Strathclyde or the University of Edinburgh, which are right in the heart of the city and compete with lots of pubs and clubs, and campus-based unions, such as those at Heriot-Watt University or the University of Stirling, serve different markets.

People drink and socialise in their student unions for many reasons. One is that they can get a reasonably priced drink, but another big reason is that student unions are safe places. They have properly trained bar staff and door staff, so if something happens to the student, they know that they will be looked after. Student unions are also safe because there is a record of who is in them. Members of the public cannot just walk in off the street. If something goes wrong, the people who cause the incident are dealt with and are not allowed back into the club.

People also go because student unions often run nights to raise money for charity or for their clubs and societies. That does not happen in the average nightclub. There are lots of reasons why students go to their unions, besides reasonably priced alcohol.

The Convener: I have a question on promotions that encourage irresponsible drinking. It is many years since I was inside a student union, but I recall certain activities that would be regarded as encouraging irresponsible drinking, such as yard-of-ale competitions. Do such things still occur in student unions? On the irresponsible promotion of new products, what guidance do student unions have on the discount that they offer on new drinks compared with the normal price of drinks of the same type? The level of discount might be a big factor in determining whether a promotion is irresponsible.

Melanie Ward: On the first point, two things have happened. First, for a number of reasons, student associations have what might be thought of as irresponsible promotions less frequently than they did in the past, partly because binge drinking is much more of an issue than it was a number of years ago—it is much more of a social issue and student associations tend to have a much more responsible attitude towards it. Secondly, promotions are found much more on the high street than was the case 10 years ago, because large pub chains have awakened to the student market and have promotions to draw students in. That is why we support coming down on irresponsible drinks promotions but believe in a fair approach that does not just target what happens in student associations. We want to stop irresponsible promotions altogether, while not unfairly penalising student associations in favour of big clubs and large pub chains.

Keith Robson: I am looking through evidence that we gave after the Nicholson committee report came out to make sure that I do not contradict anything that I have said in the past.

From talking to senior staff in the student associations, I think that they would still like to have the opportunity to promote new products. For example, NUS Services Ltd has a variety of purchasing deals. It might change from one line of soft drinks to another, or it might change from one lager product to another, so it would want the opportunity to introduce those new products to the students. There is a fine line between the promotion of a new product and having the prices so low that the situation falls under the irresponsible drinks promotion category defined in the bill.

It would be difficult to say, hand on heart, that there are never any examples up and down the country of irresponsible drinks promotions or activities such as drinking yards of ale. I can think of a couple that have made the press in the past couple of years. Those things go on from time to time, but we take a responsible attitude in encouraging students to think about the level of their drinking and about drinking safely and responsibly. We might have to do a bit more research and talk to our members if the committee wants a more comprehensive answer on where we believe the fine line should be drawn between highlighting a new product and an irresponsible drinks promotion.

Melanie Ward: There is a fairly obvious difference between a happy-hour promotion or a drink-all-you-can-for-£10 night and the union saying, "Here is a new product." It is not difficult to work out what is irresponsible and what is fair enough; common sense could be used.

Keith Robson: At the NUS Services Ltd convention last month, some of the student associations had a big debate about whether they should supply a new brand of water, because their students liked a different brand. There will be challenges for the associations in trying to sell that new brand, so, even with non-alcoholic drinks, the associations would want to have ways of introducing them.

The Convener: It has been suggested to me by someone from one of the student representative bodies that, although the majority of student unions are now adopting a more responsible approach to alcohol consumption and to awareness of health impacts, for example, one or two still take a different view and have more of a drinking culture. Is that a fair comment or are all student unions adopting a responsible approach?

Melanie Ward: That is probably a fair comment. However, it is clear that, within student
associations and the student community, there is almost self-regulation. If someone goes too far, other students will tell them that their behaviour is inappropriate. I am unlikely to see that happening on the high street, where anything goes and licence holders want to get as many people in and make as much money as they can. The situation is just not like that in student unions.

We now have an award scheme to reward student unions that are responsible and provide safe environments with well-trained staff—the best bar none scheme. We run frequent campaigns, such as asking people to watch how much they drink and telling them to take care of their drink when they are out and to make sure that no one slips anything into it. We have campaigns about how to get home safely at the end of the day and about being quiet when leaving the premises because of the neighbours. There are many welfare and health awareness campaigns that do not happen anywhere else. As a result, we feel that it is appropriate that we are recognised as being different from establishments on the high street in the context of registered club status.

The Convener: One of the issues that have still to be clarified is fees for premises licences. Do your organisations have any views on how those fees should be structured? Should they be related to capacity of venue, turnover or profit?

16:45

Keith Robson: We commented on that when we responded to the consultation last summer. I was flicking through the papers earlier, so I know that there is an answer; please bear with me. We were 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 premises might be large during the day, with a much smaller capacity in the evening, serving people behind a small bar. I cannot find the page to which I was referring. I can leave the document with you, if that is helpful, rather than taking up more of your time.

Bruce Crawford: If there are to be registered clubs and you are to be different, why can the fee not be based on the number of members that you have, rather than being structured as for everybody else?

Ian McAlpine: Often, membership numbers bear no relation to the amount of alcohol consumed, just as the size of the premises does not necessarily bear any relation to the amount of alcohol consumed. A practical way forward would relate to the size of the turnover of the facility. Some registered clubs are modest little places without many members and others are fairly sizeable. A practical way forward would be to link the fees with turnover. There is a concern that introducing a licensing standards office and more training for licensing board members will cost an awful lot of money. There is a genuine concern that the cost will be too onerous.

Melanie Ward: Most people accept that it would be unfair to charge non-profit-making organisations, such as the ones that we represent, the same fee as large high-street chains of pubs or nightclubs are charged. We do not make a profit; we make a surplus. If the fee was related to profits, that would suit us nicely.

The Executive mentioned mandatory charges for entering venues after midnight. We are concerned about that and are unsure about the rationale behind the move. Student associations are often not on campus; students will tend to drop in after they have been away playing a rugby game or watching a play. We do not think that it would make sense to charge them for entering their student association after a certain time.

The Convener: That brings us to the end of questions. Thank you.
SUBMISSION FROM THE SCOTTISH LICENSED TRADE ASSOCIATION

Licensing Boards

The Scottish Licensed Trade Association was of the opinion that the way forward for the Licensed Trade in Scotland was to have a strict Act at the core of the licensing system, with Licensing Boards, although retaining some degree of flexibility, being given clearly defined rules and regulations to work to. We are extremely disappointed that the new Licensing (Scotland) Bill gives even more power to Licensing Boards, which will continue to be administered by Local Councillors. This can only lead to rife inconsistencies, political ‘point scoring’ and confusion, not just for the trade, but the customers it serves. The fact that a Licensing Board can be constituted with as few as five members and a quorum of only three being required for the Board to sit only exacerbates the problems the trade already faces. We would agree with other contributors that a board quorum should be calculated on a sliding scale, equating to the number of members on the board.

National Licensing Forum

Although we have been advised that the National Licensing Forum will play a major role in setting mandatory conditions throughout the country, we have no details as to the breadth of power which will be given to the Forum and concerns are already being expressed at the amount of leeway be given to Licensing Boards to make decisions. Obviously the National Licensing Forum’s role in the new system is crucial.

Licences

In principle The S.L.T.A. supports the proposal of a Personal Licence and a Premises Licence. This would, in fact, help us promote our licensing principles of privilege and responsibility. The licensing of premises through their operating plans, which will contain information and conditions relating to the business, is basically a good idea, although we are of the opinion that this system will be a bureaucratic burden for Licensing Boards to manage. Already it appears some Licensing Boards would prefer a two-page operating plan, which the Association supports, others would prefer a comprehensive document containing information ranging from opening hours to a list of products being sold and a sketch drawing of where these products would be positioned behind the bar. This issue alone emphasises the inconsistencies which already exist between the various Licensing Boards and demonstrates quite clearly the need for a more centrally controlling authority.

With regard to Personal Licences, we are still unsure as to whether or not a Personal Licence holder is required to be on the Licensed Premises at all times. The Association agrees in principle that the sale of alcohol should be supervised at all times, however, it would be inappropriate for some premises to have a Personal Licence holder available 24hrs a day. The Scottish Executive must recognise that the practicalities of operating such a practice must be taken into consideration.

This Association does not, in the strongest terms, support the idea of one single Premises Licence. We would advocate that there is a need for three clearly defined licences – On-sales; Off-sales; and Entertainment and these should be held in conjunction with a Personal Licence. Each of these three licences should be clearly defined in primary legislation. By adopting three types of Premises Licence, this would allow Licensing Boards and the trade to keep an operating discipline between the different types of business and would help uphold the licensing principles defined by the Nicholson Committee. It would also be a prerequisite that the person who owns such a business must also know and have training in the operation of that particular type of licence. This would prevent some of the misrepresentations that exist at present where pubs become nightclubs and vice-versa. It is our view that, if there is to be only one type of licence, then we are going to end up with a plethora of different ‘operating plans’ perhaps nearly 17,500 of them, all competing in an already over provided and over-competitive market.

Under transitional arrangements, there will be no so-called “grandfather rights”. In other words, Licence-holders will have to apply for new licences, new hours, conditions and so on. There will
be no continuation of existing rights. This is an impossible situation for licensees to contend with, many of whom have held a licence and regular extensions for the past 10,20 or nearly 30 years.

How can licence-holders, who have been trading responsibly and built up their business around a set of conditions imposed by licensing authorities, be expected to accept that their experience goes for nothing and they must re-apply for a new licence and all that entails?

Many licensees who have applied for renewal conditions might not be able to fulfil new licensing conditions in terms of building control regulations and so on, which have changed much over the years. Are these premises then to close down? Are these people not capable of running their business overnight?

If there are to be no “grandfather rights”, and the new system is to be introduced over a three year period - the current life of a licence - will the first people who apply for a new licence have an advantage or disadvantage over their competitors? Will they be used as guinea pigs by licensing boards to see how well their new policies and strategies work?

Not to have grandfather rights is substantiated by saying that we must get away from the old act. If we have grandfather rights we will simply perpetuate the aims and ideas of the old act and not embrace this new vision of licensing in Scotland. The SLTA totally disagrees with this line of thinking. What we need is common sense and a gradual step in to what is a radical and very liberated new act, at a time when the trade is shouting for more controls not less.

Appeals

The Association is extremely worried with regard to the appeals procedure, particularly when the suspension of a licence is being considered. We cannot support the proposed practice of a licence suspension taking immediate effect. We do concede, however, that the current system is lengthy and complex, and in some cases costly, involving Solicitors and Q.C.’s. We support the view that there should be a faster system of appeal or tribunal and this should be held within 7 days.

Occasional Licence

Whilst we welcome restrictions on the number of Occasional Licences issued to Voluntary Organisations, there is still the issue of training for all alcohol servers. The SLTA continues to strongly advocate that occasional licences should only be granted to suitable Personal Licence-holders and the Licence-holder should be present at the event.

Over-provision

On the question of over-provision: In 1976, when the Licensing (Scotland) Act was published, there were 11,843 Liquor Licences in Scotland. In 1998, the figure had risen to 17,583 and yet the population in Scotland had fallen. It is difficult to understand how an increase of 50% can be acceptable.

The current Act states “having regard to the number of licensed premises in the locality at the time the application is considered (Grounds for refusal by the Board are) the Board is satisfied that the grant of the application would result in the over-provision of licensed premises in the locality”.

Regrettably, this section is seldom heeded. Members of the Licensing Board, who are of course Councilors, often suggest that if commercial premises are empty and an individual or company apply for a liquor licence, it should be granted as this will, in turn, bring in Commercial Rates. It is most unusual for a Board to consider the serious consequence for either the residents or the environment. Over-provision is perhaps the most serious problem faced by the trade today. It is responsible for deep discounting, an erosion of investment in the fabric and furnishings of premises and the general decline in standards in many licensed businesses.

The proposals in the new act do nothing to alleviate our concerns on the issue of over-provision. The Scottish Executive has missed a golden opportunity to eradicate this problem.
Again, instead of keeping control within the act, as we wanted to see, they have given local licensing boards all the power to resolve the issue. Boards will be responsible for assessing over-provision, for the locality it will have jurisdiction over and what they will do about this. We would hope that Licensing Boards’ aims and objectives on over-provision will be the same as the Scottish Executive’s and The SLTA’s, however current situations do not appear to reflect that.

For example in Edinburgh the local council have recognised that some areas of the city centre are over-provided. In Glasgow the Chair of the Licensing Board has stated that it is impossible for Glasgow City Centre to be over-provided with licences and he would never use over-provision as grounds for refusing a new licence.

We continue to urge the Scottish Executive to legislate for over-provision to gain some consistency throughout Scotland. The long-term solution is a moratorium on the granting of new licences. This would bring stability back into the business long term, stop the price promotions and ensure a licensed trade based on quality, not quantity of premises and promote the licensing principles.

Licensed Hours

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. The Association is relaxed with regard to Off-sales premises being given the opportunity to open earlier on Sunday mornings and closing at 11.00 p.m. We see no need for longer hours in the Off-sales sector as this would only lead to an increase in the abuse of alcohol.

There is also the concern that Licensing Boards will come under severe pressure, through applications and appeals, from the national groups to grant longer hours for this particular sector.

We are aware that licensing boards will have to develop policies on issues such as hours, but are of the opinion there will be inconsistency throughout the country and insufficient checks and balances will be in place to give effective control.

Promotions

Irresponsible promotional activity illustrates very well the problems that arise when laws cannot balance a market running completely out of control and The SLTA’s stance is that price should not be used as a marketing tool. The Scottish Executive’s proposal to stop irresponsible promotions was, initially, attractive. Although not perfect, the 48-hour rule and the list of banned irresponsible promotions, together with the need to uphold the licensing objectives, seemed a good approach. However, the majority of our members are of the opinion that the 48hr-rule will become a loop-hole which will allow some operators to continue to carry on with irresponsible promotions. The Association is even more concerned that it would appear at present Off-sales premises are to be excluded from these restrictions. This is simply ludicrous and totally unacceptable to SLTA members. Under the new regulations, off-sales will have the opportunity to open 24 hours a day and to exempt them from the proposed irresponsible drinks promotion regulations, when it is known there are problems in this sector of the trade in terms of underage and binge drinking, makes no sense whatever.
More and more people are buying cheap drink from the Off-sales sector and consuming it before they visit On-sales premises. We know from other jurisdictions, who have a very high proportion of alcohol sales from the off-trade, that they have very high alcohol abuse problems as well. There are very many well-run responsible off-sales operators in this country, however there are also some who are totally irresponsible. The price charged, especially in the supermarkets, are quite often invitations to abuse alcohol. Surely the Scottish Executive must include all Licensed Premises in any irresponsible drink promotion regulations.

Objectors

The Association is extremely concerned that, under the new Bill, any person will be able to object to the grant of a licence on specific grounds and any person will be able to request a review of a current licence.

It is important that an individual can fully substantiate their objection. We recognise that the new Bill allows for a Licensing Board to reject an objection on frivolous or vexatious grounds. However, we remain unconvinced. There must surely be some demarcation to stop objections being lodged from individuals who reside nowhere near the premises in question. We would also advocate that any person or group sending in a written objection to the Licensing Board should, on the day of the Board sitting, make themselves available for questions by the Board.

We would also question the reasoning behind the proposal that the Police can only object to a new licence on the grounds that the applicant has a relevant conviction.

This narrowing of Police authority is extremely concerning to the Licensed Trade. The competency of the Police to object on the grounds that the applicant has a relevant conviction should be in addition to the current legislation, in that, the Police as a body are recognised competent objectors. After all, if any individual can object to a licence, why should the Police be excluded?

Provision of non-alcoholic drinks.

We find it quite incredible that the On-sales Licensed Trade is being targeted, by legislation, on two issues regarding pricing. The first being to provide tap water free of charge when requested to do so by customers and to provide soft drinks at reasonable prices. The issue of legally being required to provide free tap water begs the question - will this be provided free from the supplier, i.e. Scottish Water. Businesses already pay excessive water charges and this proposal would appear to be discriminatory towards the On-sales Licensed Trade.

Turning to reasonably priced soft drinks, again why are the On-Sales premises being targeted and what is the definition of "reasonable"? The Department of Trade and Industry, in 2002, investigated the issue of soft drink prices in Licensed Premises and concluded that the trade had no case to answer. It is not just a case of the price charged, but the service provided and the costs associated with that service, the quantity and quality of the product offered. The DTI were presented with evidence from the Licensed Trade, drawing the comparison between supermarket cafeteria charges and public house charges, which proved the supermarket was in fact more expensive. When there have been comments on the price of soft drinks, compared to alcoholic beverages, it has been said that, perhaps the problem is alcoholic drinks are too cheap.

Registered Clubs

The Association welcomed the recommendation in the new Act that Clubs be brought under the full jurisdiction of the Licensing Boards. However, there is still concern that the Licensing regime for clubs will not be as strict and will be subject to further modifications.

As previously stated, these comments are our initial views on the Licensing (Scotland) Bill. We are sure that our members will bring further concerns to our attention in due course.

Colin A. Wilkinson
Secretary.
The Scottish Retail Consortium (SRC) welcomes the opportunity to meet with members of the Committee on 12th April.

To provide some insight into the activities of the Scottish Retail Consortium (SRC), we would point out that SRC was launched in April 1999 as a retail trade association for the full range of retailers in Scotland, from the major high street retailers and supermarkets to a number of trade associations representing smaller retailers. As a sector, retailing in Scotland employs 261,000 people (one in ten of the workforce) in 26,500 outlets across Scotland, and in 2002 Scottish retail turnover was £18.4 billion, accounting for 12% of total Scottish turnover.

The retail sector is key to the revitalisation and renewal of urban and rural communities across Scotland. The SRC’s members provide a vital community service, a focus for physical regeneration, and sustained investment in people and places.

The SRC’s parent association is the British Retail Consortium (BRC) based in London and Brussels. The undersigned is based at the BRC London office and holds the job title of Head of Technical Services with the remit to represent the BRC and SRC members on issues such as Licensing legislation.

We note that the objective of the Local Government and Transport Committee meeting on 12th April is to ascertain the views of industry sectors regarding the proposals laid down within the Licensing (Scotland) Bill and gain an understanding of the impact the Bill may have on the SRC membership. Within you letter of 23rd March you have asked for brief written comments in order to assist members of the Committee with the preparation of questions to be put forward on 12th April.

We would therefore wish to submit written evidence on the behalf of the SRC members on anticipated impacts of the Bill may have on their operations, and for the sake of good order have categorised our comments relating to specific areas of operation or activity.

**The Licensing (Scotland) Bill**

The SRC supports the aims and objectives of the Licensing (Scotland) Bill and the establishment of an ‘Expert Reference Group’.

The retail sector is typically highly compliant with legislative requirements and is responsible for promoting self-regulation through trade bodies.

The SRC would welcome continued dialogue with appropriate bodies on the development of associated regulations or guidance to ensure there is a proportionate and pragmatic approach to the implementation of the Bill.

**Responsible Retailing of Alcohol: Guidance for the Off –Trade**

The British Retail Consortium, the parent association of the Scottish Retail Consortium was directly involved with the development and promotion of the Responsible Retailing of Alcohol: Guidance for the Off-Trade.

This document was developed in association with the Association of Convenience Stores and the Wine and Spirits Association. The document is formally supported by the Scottish Grocers’ Federation, British Institute of Innkeepers, the National Federation of Retail Newsagents and the Northern Ireland Independent Retailers Trade Association.

The development of this document provides a guide to new and existing licence holders on the responsible retailing of alcohol and covers important areas namely underage purchases, promotion and advertising, staff training and the siting of alcohol in store. The retail sector is highly diverse with respect to size and type of operation, but the Guide provides best practice for the whole...
industry and was drafted to advise retailers on the possible changes following publication of the Alcohol Harm Reduction Strategy for England and the Nicholson Committee Report in Scotland.

There are currently concerns within member organisations in relation to the scope and appropriateness of possible personnel training requirements and proof-of-age schemes.

The SRC believe that as a sector, the off trade has acted responsibly and proactively to ensure compliance with legislative requirements and would wish to explore with the Scottish Executive how self regulation and codes of best practice can be incorporated within the framework to meet the Licensing Bill’s objectives.

**Better Regulative Process**

The British Retail Consortium has been actively involved in England and Wales with the implementation of the Licensing Act 2003. There have been major issues to address as the legislation is new and complex, where implementation by licensees and local authorities has proven to be difficult.

It is envisaged as part of any future consultation, experience can be brought to the table and a clearer view of the issues can be shared.

**Anti-social Behaviour and Licensing**

The SRC believe anti-social behaviour is a broad and highly complex issue and needs to be considered in the widest possible context.

Significant steps have already been taken by retailers to ensure under age sales are not made with the introduction of proof of age schemes, the introduction of initiatives such as ‘challenge 21’, the promotion of focussed staff training schemes and the publication of specifically targeted training documents.

Retail stores cannot be held responsible for anti social behaviour once customers have left the premises and are outside their direct control and it must be recognised that licensing law is not a mechanism for the general control of anti-social behaviour. We do however acknowledge that licensing law can go part way to minimising the risk of the occurrence or recurrence of anti-social behaviour, for example the non-entry of a drunken person to a licensed premises and the refusal of a licence where breaches of the law are made on a regular basis.

The SRC believes with the correct application of the licensing laws and appropriate co-operation with all interested parties within the legal framework, there could be a possible reduction in the incidences of anti-social behaviour.

**Hours of Alcohol Sales**

There are a number of the motivators for legislative change:

- to simplify and modernise the existing legislation (the Licensing (Scotland) Act 1976 and the relevant parts of the Law Reform (Misc. Provisions) (Scot) Act 1990)
- to balance the rights of the majority of people who drink responsibly against the need to protect focal communities from nuisance and crime associated with misuse of alcohol
- to support responsible members of the licensed trade

The Nicholson Committee envisaged change leading to a more flexible system of store opening hours, but it would seem the emphasis has moved toward restricting these hours.

There must be careful thought given to this issue and the SRC would not wish to see standard conditions on hours imposed universally. If problems exist with particular premises then the SRC would advocate that appropriate action should be taken under the provisions of the legislation, however responsible business operators could be penalised, if Licensing Boards impose inappropriate ‘blanket conditions’.
This issue must be considered in the context of customer need and choice, where there are a significant number of people who work night shift or non standard hours and these customers may wish to carry out a weekly shop outside ‘normal business hours’. Several large retailers now open on a 24-hour or an extended hour basis, where appropriate controls exist for the sale of alcohol across these opening hours. If there are customers who wish to purchase alcohol whilst the store is open, and as long as there is no contravention of the Licensing Bill, then they should be allowed to do so.

**Over-provision**

The SRC noted that within the White Paper published last year, it was suggested that over provision requirements should only be applicable where the sale of alcohol is the main business activity; however this has not been carried forward whilst drafting the Bill. 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 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.

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.

**Irresponsible Promotions and Advertising**

The SRC believes ‘irresponsible’ (no definition of irresponsible) promotions, which encourage alcohol abuse, binge drinking and anti-social behaviour should be strictly controlled and would point to the Responsible Retailing of Alcohol: Guidance for the Off –Trade, where best practice for alcohol promotions is specified.

The SRC feels the Scottish Executive have recognised that there are significant and acknowledged differences between on and off trade promotions, and fully appreciates the need for the Executive to keep this aspect of the legislation under review. However, the SRC would point out that there has been a great deal of debate on alcohol promotions and the OFT has deemed that minimum pricing of product would be contrary to the competition legislation.

The SRC welcomes this decision and will actively promote the recommendations made within the Responsible Retailing of Alcohol: Guidance for the Off –Trade.

**Siting of Selling Points**

The SRC would again point the reader to the Responsible Retailing of Alcohol: Guidance for the Off –Trade, which provides clear good practice recommendations on the siting of alcohol in store. The SRC believe there could be discretionary conditions imposed by individual Licensing Boards in relation to the off trade.

There is concern that the individual Boards could impose conditions relating to the provision of separate display areas, where they deem it appropriate. This requirement is extremely unclear as to the definition of such an area, with respect to store layout and design. There is also concern that these conditions will eliminate currently acceptable practices such as the display of seasonal products, e.g. port and stilton within chilled display cabinets and therefore outside designated areas.

If measures of this kind were to be put into place there would be a heavy burden on the retail sector, particularly for smaller stores. We would wish to point out that the vast majority of retailers sell alcohol in specific areas within their stores and there seems little evidence to support that such
measures would promote the objectives of the Bill and would be seen as being a totally disproportionate measure to the risk of an offence being committed.

In closing the SRC would once again wish to thank the Local Government and Transport Committee for the opportunity to present to them on 12th April.

Kevin Swoffer
Head of Technical Services

SUBMISSION FROM THE PORTMAN GROUP

Introduction

The Portman Group (TPG) was set up in 1989 by the UK’s leading alcoholic drinks producers. Its purpose is to promote responsible drinking; to help prevent alcohol misuse; to encourage responsible marketing; and to foster a balanced understanding of alcohol-related issues.

TPG speaks for its member companies¹ on these social aspects of alcohol. It does not represent any drinks companies or other part of the trade on any other matter. TPG nevertheless welcomes the participation of the wider drinks industry – manufacturers, wholesalers and retailers – in its activities, for example as signatories to the Code of Practice, or in using the Proof of Age Card scheme, and believes that the drinks industry can thereby demonstrate its social responsibility, help to protect its commercial freedoms and enhance its success in a manner consistent with good citizenship.

Since 1996, TPG has administered on behalf of drinks producers a self-regulatory Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are marketed in a socially responsible way to an adult audience only. It should be noted that the Code does not apply to retailer-generated promotions (Happy Hours, etc).

General comments

We are, in general, supportive of the Bill. We consider that many of its provisions will serve to promote more responsible drinking behaviour. We have submitted detailed comments at various stages of the development process.

Retailer promotions

While we consider that majority of alcohol promotions by retailers are unobjectionable, there is a minority that can encourage excessive consumption. It must be remembered that alcohol is not like most other goods in that, if consumed in excess, it can cause harm to the drinker and it can contribute to harm caused by the drinker.

Promotions in the off-trade are less likely to be problematic because even if the promotion encourages the purchase of a large volume of alcohol, that alcohol may be consumed at the purchaser’s leisure over many weeks or months. Promotions in the on-trade, however, encourage the purchase of alcohol for immediate consumption and therefore, unless care is taken, may be criticised for encouraging immoderate consumption and/or inciting drunkenness. We have issued guidance under our Code of Practice (see below) to help drinks producers ensure that on-trade promotions are responsible.

We note that the Licensing (Scotland) Bill does not seek to discriminate between responsible and irresponsible promotions in the on-trade; it simply bans all promotions. This will unfortunately impact not only on drinks retailers, but also on drinks producers who may be attempting to run responsible, UK-wide promotions.

¹ Member companies: Allied Domecq, Bacardi Brown Forman Brands, Beverage Brands (UK) Ltd, Carlsberg UK, Coors Brewers, Diageo Great Britain, Interbrew UK, Pernod Ricard, Scottish & Newcastle.
Underage sale and purchase

We note the Bill’s provisions concerning underage sale and purchase of alcohol. We think it would be helpful to have an endorsement of the UK-wide Proof of Age Standards Scheme (PASS) under which our own proof of age card is accredited. This would perhaps more appropriately appear, however, within the Scottish Ministers’ Guidance to Licensing Boards than within the legislation itself.

Retailer Alert Bulletins (RABs)

When a product is found by the Independent Complaints Panel to be in breach of our Code of Practice, we ensure compliance with the Code by asking retailers not to stock the product until it has been amended in a suitable manner. We do this through issuing what is called a Retailer Alert Bulletin (RAB). The retail trade’s observance of the RAB is vital to the success of our self-regulatory system. We advise that retailers who ignore the RAB may be reported by us to their local licensing authority. It would be helpful to have an endorsement of our Code of Practice and the RABs to encourage compliance by retailers. Once again, however, it is probably more appropriate that any such endorsement is contained in the Scottish Ministers’ Guidance to Licensing Boards rather than within the legislation itself.

PORTMAN GROUP CODE COMPLIANCE HELP NOTE

AVOIDING THE ENCOURAGEMENT OF IMMODERATE CONSUMPTION IN ON-TRADE, MULTI-PURCHASE PROMOTIONS BY DRINK PRODUCERS

This help note is intended to help drinks producers comply with The Portman Group’s (TPG’s) Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The help note represents the opinion of TPG’s Advisory Service and is based, in part, on previous decisions made by the Independent Complaints Panel. Please note that the Panel is the final arbiter on how the Code should be interpreted and applied. Following the advice in this document is no guarantee that your product’s packaging or promotion will not be found in breach of the Code if a complaint is received.

1. BACKGROUND

Introduction

1.1 Alcoholic drink producers, like producers of other goods, may occasionally seek to boost sales of their products through point-of-sale promotions (i.e. temporary offers). Whilst there is not necessarily anything wrong with this, it must be remembered that alcohol is not like most other goods in that, if consumed in excess, it can cause harm to the drinker and it can contribute to harm caused by the drinker. Rule 3.2(f) of The Portman Group’s Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks requires that a drink’s promotional material should not encourage immoderate consumption and drunkenness.

1.2 Promotions in the off-trade are less likely to be problematic in this way because even if the promotion encourages the purchase of a large volume of alcohol, that alcohol may be consumed at the purchaser’s leisure over many weeks or months. Promotions in the on-trade, however, encourage the purchase of alcohol for immediate consumption and therefore, unless care is taken, may be criticised for encouraging immoderate consumption and/or inciting drunkenness. This is particularly a risk for those promotions which encourage consumers to purchase more than one drink in order to attain a reward (a multi-purchase promotion).

1.3 This help note looks at the issues surrounding on-trade, multi-purchase promotions and offers advice on how such promotions can be designed so that they do not encourage immoderate consumption and/or drunkenness and thus do not fall foul of the Code.
What the Code covers

1.4 The Code applies, among other things, to point-of-sale advertising for alcoholic drinks brands that is produced by either the drink producer or its UK distributor. The Code does not apply to advertising produced by a drinks retailer (unless that retailer is also the brand’s producer or UK distributor). This means that point-of-sale advertisements for on-trade promotions that are generated by the drink producer or UK distributor are subject to the Code’s requirements. Point-of-sale advertisements for promotions that are generated by the retailer (for example, Happy Hours or a flat-rate entry fee with free drinks all night) are not covered by the Code. In these cases, retailers are advised to follow the guidelines on such promotions issued by the British Beer and Pub Association.

Types of promotion

1.5 The most common types of producer-led promotion that are covered by the Code are price-related offers and premium offers.

1.6 Price-related offer – This is where the consumer is offered an incentive to purchase a particular product through a price reduction. The reduction could apply to any volume of the drink purchased (e.g. “Half-price bottles of x on Tuesday night”) or could apply only when a certain minimum volume of drink is purchased (e.g. “Two bottles of x for the price of one”, “Buy four pints of y and get one pint free”). The latter can be described as multi-purchase promotions.

1.7 Premium offer – This is where the consumer is offered an incentive to purchase a particular product through the offer of a different product or service free or at a discounted price. Once again, the offer could apply with any volume of drink purchased (e.g. “Free key ring with every bottle of x”) or could apply only when a certain minimum volume of drink is purchased (e.g. “Buy three bottles of x and get a t-shirt for only £2”, “Enjoy a free trip to the cinema when you buy five pints of y”). Sometimes, the premium offer may involve another alcoholic drinks brand produced by the company (e.g. “buy a bottle of x and get a free shot of y”).

2. CREATING RESPONSIBLE PROMOTIONS

Observing sensible drinking guidelines

2.1 The UK government advises that, in general, men can drink up to three or four units of alcohol a day, and women up to two or three, without putting their health at significant risk. A unit of alcohol equates to approximately a half pint of ordinary strength beer (3.5% ABV), half a 175ml glass of wine (12% ABV) or a 25ml serving of spirit (40% ABV). Regular consumption of greater amounts is not advised as it carries a progressive health risk. We would expect the Independent Complaints Panel to take these guidelines into account when deciding whether a promotion is in breach of the Code for encouraging immoderate consumption.

2.2 It is not necessarily the case that any promotion which involves the purchase of more than three or four alcohol units is automatically going to be found in breach of the Code. After all, the above amounts are only guidelines. The occasional exceeding of these guidelines does not necessarily represent reckless behaviour on the part of the consumer and might not be regarded as “immoderate drinking” by the Independent Complaints Panel. Nonetheless, in the same way that drinkers who exceed the guidelines face an increasing risk to their health, drink companies that seem to encourage consumption in excess of the guidelines face an increasing risk of breaching the Code.

2.3 (The term “purchase”, for the purposes of this guidance, includes any alcohol that is offered free within the promotion for immediate consumption. For example, “Buy two bottles and get a third free” would mean that the consumer is effectively “purchasing” three bottles.)
Spreading promotions over longer periods

2.4 The easiest way to avoid problems with promotions requiring the purchase of relatively large volumes of alcohol, and possibly the only way if the volume exceeds ten units, is to spread the promotion over a period of days or weeks. This might be done through inviting the consumer to collect proofs of purchase. For example, “Buy 20 pints of x this winter and claim a free jacket”. The consumer collects a coupon each time they purchase a pint and gradually accumulates the required number over a period of time. Of course, some consumers may irresponsibly choose to collect the coupons within a timeframe of one or two days and thereby drink excessively – but at least they have not been encouraged to do that by the terms of the promotion. If a promotion is spread over a period of time in this way, thus allowing an individual to benefit from the offer while still maintaining moderate drinking behaviour, it should be acceptable under the Code.

Making clear that promotions are designed for groups

2.5 If a promotion involves the purchase of relatively large volumes of alcohol and cannot be spread over a longer period of time, another way of reducing potential problems is to make explicit that the alcohol on offer is intended to be shared by more than one person. This might be done through the text or visual of the POS material (e.g. “Buy a bottle of x and get another free for your friend” or “Three shots of x for the price of two” alongside a visual of three people drinking).

2.6 There is a danger that this approach could be criticised on the grounds that it is encouraging “round-buying”. Some people feel that the buying of rounds is more likely to lead to excessive consumption because it tends to lead to people drinking at the pace of the fastest drinker in the group. Indeed, round-buying is not allowed to be shown in television advertisements because of this and because there could be an implied expectation that everyone in the group will eventually buy a round (i.e. in a round of six people there is an implied expectation that they will each consume at least six drinks in that session).

2.7 Despite this, we consider that it is preferable to indicate that promotions involving relatively large volumes of alcohol are intended for shared consumption than to perhaps leave the impression that such offers are appropriate for, and aimed at, an individual drinker. The term ‘round’, however, should be avoided and there should be no suggestion that each consumer within a group should take advantage of the offer in turn (i.e. round buying).

2.8 We would not expect the terms of the promotion to make the shared consumption a condition of the offer; that would be impractical. The important thing is for the drinks company to show that it is doing all that it reasonably can to discourage immoderate consumption.

Including responsibility statements

2.9 It might also be helpful to include a statement encouraging responsible consumption (e.g. “Please drink responsibly”). Such a statement is not mandatory and neither does it excuse a promotion that clearly encourages drunkenness. It does, however, help demonstrate a commitment by the drinks producer to the principle of responsible drinking. In borderline cases, particularly those involving considerably more that four units but which are intended to be shared among a group, the inclusion of a responsibility statement may help to persuade the Independent Complaints Panel that a particular promotion is acceptable under the Code.

3. SUMMARY OF CODE ADVICE

3.1 An on-trade promotion which requires the consumer to purchase no more than four units of alcohol in one session is unlikely to be problematic under the Code (though note paragraph 3.5, below). “Purchase” includes any alcohol that is offered free within the promotion for immediate consumption (e.g. “Buy two bottles and get a third free” would mean that the consumer is effectively “purchasing” three bottles).

3.2 On-trade promotions which require the purchase of more than four units of alcohol in one session run an increasing risk of being found in breach of the Code, unless the promotional material takes the steps outlined below.
3.3 If an on-trade promotion requires the purchase of more than four units, and particularly if it requires the purchase of more than ten units, companies are encouraged to make the promotion a coupon collection scheme whereby consumers are allowed to purchase the alcohol over a reasonable period of time (i.e. days or weeks).

3.4 If an on-trade promotion requires the purchase of more than four units in one session, companies should consider making explicit in promotional material that the alcohol purchased is expected to be shared by more than one drinker. This could be done through the text or a visual. There should be no explicit reference, however, to round-buying. Depending on the extent to which the required purchase exceeds four units, companies should also consider including a statement encouraging moderate consumption. Promotions which require the purchase of more than ten units in one session are unlikely to be acceptable under the Code.

3.5 The sensible drinking guidelines for women are lower than for men, reflecting women’s lower tolerance of alcohol. If an on-trade promotion is aimed specifically at women, companies should take this difference into account and be more cautious when devising the promotion.

3.6 A unit of alcohol is equivalent to approximately a half pint of ordinary strength beer (3.5% ABV), half a 175ml glass of wine (12% ABV) or a 25ml serving of spirit (40% ABV). The number of units in a particular drink can be calculated by multiplying the volume (in ml) by the ABV and then dividing by 1000.

4. THE PORTMAN GROUP’S CODE ADVISORY SERVICE

The above guidance should help you to avoid problems under the Code. If you are in any doubt, however, as to whether your product’s proposed packaging or promotional activity conforms to the Code you can seek free, fast and confidential advice from The Portman Group’s Advisory Service. To obtain advice, please telephone The Portman Group on 020 7907 3700 and ask for the Advisory Service. Alternatively, e-mail your request to kgill@portmangroup.org.uk, preferably including a colour layout of the proposed packaging or promotional materials, or full details of the proposed activity.

SUBMISSION FROM THE COAL INDUSTRY SOCIAL WELFARE ORGANISATION

The COAL INDUSTRY SOCIAL WELFARE ORGANISATION (CISWO) is a National Charity (registration 1015581) concerned with promoting Social Welfare in Mining Communities and assisting mineworkers, retired or redundant mineworkers and their dependants, offering information advice and support to enhance quality of life. CISWO (Scotland) promotes community regeneration and development through professional support, in partnership with others, to 53 Miners Welfare Schemes and other coalfield charities/community organisations and groups. Striving to empower people and communities through confidential client/beneficiary support and project development promoting social inclusion. CISWO is the umbrella body for Miners Welfare Clubs and is a member of the Committee of Registered Clubs Association (CORCA).

CISWO (Scotland) welcomes the invitation to give evidence to the Scottish Parliament’s Local Government & Transport Committee regarding the above Bill.

CISWO (Scotland) agrees with the main objective of Stage 1 of the Bill to create a more modern, simple and flexible licensing system for Scotland.

CISWO (Scotland) requests the Scottish Executive protects the special status of Registered Clubs when they come within the proposed new licensing system.

The Bill proposes that clubs should be brought within the licensing system with pubs, hotels, and discos, rather than continue the separate system of registration with the Sheriff. We accept that this makes sense, but the different nature of members clubs must be recognised. A club is a private association of people with a common interest or purpose whether it be sporting, social, or charitable. They are not run with a commercial purpose like pubs and hotels. This is not taken account of in press reports, because many of these relate to allegations by the licensed trade that
clubs are competing with pubs, and unfairly at that. This perception arises partly from lower prices, because the liquor in clubs is sold as a facility to member, and not as a commercial enterprise. Rebates of non-domestic rates are also looked at jealously by licence holders, but clubs are voluntary associations, not commercial enterprises.

The current legislation has its origins in the late 19th century, and many of the court decisions on club law are from that time and the early twentieth century. They reflect a different society and standards and are not very relevant to the present day. In particular, the reasons for courts reaching their decisions in those days owe a little less to jurisprudence and more to the class system and social standing than would be the case today. Many of these decisions relate to "gentlemen's clubs". It is therefore necessary that new legislation is tailored to present day society and the ways in which clubs fit into that.

There is fundamentally no problem with registered clubs in Scotland. Only in an extremely small minority of cases where a club is not run strictly in accordance with the provisions of the 1976 Act, (there may be admission of the public without control, regular discos advertised freely to which non members are welcomed, and general lack of control over hours) they can undermine the excellent reputation of the vast majority. These clubs are cited as examples of competition with licensed premises, but they are not common. They are, and should be, dealt with by Licensing Boards restricting their hours and Sheriffs cancelling their registration. The majority of clubs registered in the country continue their sporting, social or welfare activities quietly with no detriment to licensed premises.

Since clubs are established by private individuals for the benefit of these individuals, the sale of liquor is ancillary to the primary purpose of the club. Any group of people can set up a club to promote their interest or sport, and no special procedure is required for that. The requirement for registration at present, and a Licence under the new system, will purely be to permit the ancillary sale of liquor. The conditions imposed in such registration or Licence should not be such as to restrict the fundamental purpose of the club. The basic human right to form such a club should not be detracted from to a greater degree than is necessary to achieve the licensing principles. The Licensing (Scotland) Act 1976 is clear, at Section 102 (4), that registration does not make a club licensed premises. That distinction should be preserved in the new legislation to ensure that Clubs are not tempted to operate as pubs, and club members' privacy is protected. It should be based on proper research and information and not simply on allegations by the licensed trade.

The English licensing system under the Licensing Act 2003 has a separate club premises Certificate. The Bill envisages an ordinary premises Licence with an operating plan which would set out the type of operation. In the case of a members' club, the present Section 107 would be a useful foundation for the conditions to be attached to the operating plan for Licences for members' clubs. Specific conditions may require to be added to keep the activities to those of the club, and that would be the role of the constitution of the club to an extent.

Specific matters which require updating are:-

(i) The position of guests. The case law on this is based on 19th century decisions which are not relevant to the present situation. These cases set up a fiction that there is no sale of liquor, simply supply, because the liquor is the property of all the members of the club and supply to a member is not sale because he owns it anyway. It is supposed to be conversion of an asset of the club to the money of the club. That totally ignores the Sale of Goods Act and reality. It must be made clear that sale is taking place, and that guests can purchase. The English legislation is clear on this. It is necessary to prevent abuse that the guest is a real guest and is signed in by a member in a visitors book.

(ii) Club Licences should not be taken into consideration in calculating over provision in an area. They are private and not competing with licensed premises for passing trade. The sale of liquor is ancillary to the clubs main purpose. Therefore the inclusion of club Licences in an over provision calculation could prevent the establishment of commercial premises which may be needed in the area.
(iii) There are clubs which are community facilities, such as social clubs in villages and miners' welfare charities providing a wide range of social welfare services, assisting in combating social exclusion. These are social centres, and are used on occasions in the year for the village gala and Christmas parties for the whole village and not just members. To accommodate the people of the community on such occasions, bearing in mind the climate of Scotland, there should be the facility to admit non members for such an occasion to the building with the approval of the Licensing Board. Some clubs have large premises which could use a room with no bar to accommodate the people at the function, but some are small, with only one or two rooms, and would need such a facility.

(iv) Nicholson recommended that children should be admitted to licensed premises unless excluded by the operating plan for the premises, but it now appears that specific consent to the admission of children will be required. This should be allowed if the club wishes it, because it facilitates the socialising by members in the club and strengthens the club spirit. It makes it easier for members to bring their spouses to functions and allows a Christmas party or other activities arranged for children of members.

(v) Care will be required over the definition of a miners' welfare in Scotland. I note that, in the latest draft of the Gambling Bill, at clause 263, there is a definition of miners' welfare institute. The first option in clause 263(2) is not feasible in Scotland due to the decreasing numbers of population who meet the criterion. Miners' welfare exist to look after the interest of former mining communities and a better definition of the qualification for membership would be "persons who are or have been connected directly or indirectly with the mining industry or live in a past or present mining area and to relatives or dependents, and those who are in general sympathy with the aims and objects of the club". The second criterion set out in clause 263(4) of the gambling Bill is suitable, but CISWO would prefer to have both these criterion set out above including that in clause 263(4). Miners welfare are probably to be defined in the Licensing Bill under clause 117 and CISWO would be happy to assist with further guidance on the subject of Miners Welfare Charities and Social Clubs.

CISWO (Scotland) supports the Bill's requirement for Training of those involved in operating bars, Licensing Standards Officers and Licensing Board Members including highlighting that Clubs are different from ordinary licensed premises.

The proposed right of access by police does not present any problem as normal practice ensures mutual support by welcoming in police officers. However, it is critical Police Officers also receive proper training in the law relating to clubs, with the emphasis on the fact that they are private associations whose member's rights must be respected.

In conclusion the purpose of the new legislation should not be to make members clubs just like pubs. Members are entitled to have their club run the way they intend, and that should not be prejudiced by licensing further than is necessary to achieve the licensing principles. A club, properly run, operates far more tightly than a pub, and members are under the rules of the constitution and social pressure from other members to behave properly. Operating plans for members' clubs should recognise this and the human rights of the members. It is necessary to continue to stress the special nature of members' clubs and to emphasise that they are not open to the general public in relation to the sale of alcohol. The Bill needs to highlight this properly, to avoid the confusion and opposition from those in the trade and elsewhere who consider that registered clubs compete with ordinary licensed premises on an unfair basis.

If you have any queries, or I can be of further assistance please do not hesitate to contact me.

Ian JS McAlpine
Regional Manager
CISWO (Scotland)
SUBMISSION FROM THE NATIONAL UNION OF STUDENTS

NUS Scotland

NUS Scotland is a federation of local student organisations in Scotland, comprising over 60 local campus student organisations affiliated to the National Union of Students of the United Kingdom (NUS). NUS Scotland is an autonomous, but integral, part of the National Union of Students. The students’ associations in membership of NUS Scotland account for 85% of students in higher education in Scotland and over 90% of students in further education in Scotland. Students’ associations affiliated to NUS retain autonomy over all policy areas, and may choose to make individual students’ association submissions based on local policy. NUS Scotland operates a democratic forum for policy and debate on national issues affecting students and NUS Scotland’s role is to reflect the collective position.

Introduction

NUS Scotland would like to thank the Local Government & Transport Committee for the invitation to submit evidence on the Licensing (Scotland) Bill. This Bill is the product of a consultative process which was initiated in 2001 by the then Justice Minister, Jim Wallace MSP QC, with the formation of what became known as the Nicholson Committee. Over the intervening period NUS Scotland and its members have played an active part in what has been an open, accessible and transparent consultative process leading to the introduction of the Bill.

The reasoning behind the Bill

NUS Scotland agrees wholeheartedly with the five key licensing objectives firstly set out by the Nicholson Committee and then reiterated in the Bill:

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

We feel that these licensing objectives will not only provide a framework against which the legislation can be formed, but will also greatly assist those in the sector to operate in a way that is appropriate and delivers for customers and society at large. Indeed these objectives form part of the ‘Best Bar None’ good practice awards promoted by NUS, which we will refer to in more detail later.

A unique operating environment

The following submission is designed to highlight the position of students’ associations, both in relation to the proposals contained within the Bill, and the function of students’ associations as non-profit making bodies that promote the general welfare of the student body.

Students’ associations vary tremendously in their relative size and structure, and the services provided to their members reflect this diversity. Many exist on very limited resources and have no commercial services, but others involve a high level of commercial services, notably at the larger universities. The commercial services include the sale of alcohol in shops, bars and restaurants, and include late night entertainment.

Students’ associations provide bars selling alcohol essentially as part of the provision of social and recreational facilities to their membership. This often begins during the students’ first week at the institution, and social programmes associated with induction or ‘Freshers’ Week’ play an important role in promoting the welfare of students. Much of the motive behind the student-led provision of services has been to reflect the more diverse needs of students. The catering services, for example, provide a wider range of choice for minorities, such as vegetarian, vegan and religious dietary requirements.
In the same way, much of the social and entertainment services of students' associations reflects the need to ensure a 'safe space' in which students from a diversity of backgrounds can socialise. In urban areas, where alternative entertainment may be available locally, programmes run by and for students often provide a safer setting for both specific groups and students generally. They can also usually be provided at a reasonable cost, where food and bar facilities reflect students' ability to pay and the 'not for profit' role of the union. In the further education sector, student entertainment provides a means of raising income. Where external venues are used, the present costs that are set against events are usually limited to advertising and printing costs. As the purpose of running such events is not solely to raise funds, but also to provide a social event in colleges where there are limited means of developing a social identity, the students' association's role is even more vital. It should also be noted that many further education students' associations organise social events, not only to raise funds for themselves, but for other charitable projects and organisations. Many have played a valuable role in the life of their local communities in this respect.

NUS Scotland would assert that students' associations remain the safest environments in which students can socialise and consume alcohol. Student welfare is a clear function and responsibility of the students' association. Students' associations regularly run safe drinking campaigns and alcohol awareness weeks. These campaigns are often funded from any surplus generated by commercial activity. Students' associations are, therefore, almost unique in this respect in their overriding concern for the health and welfare of their membership. In many circumstances, students' associations also provide safe and affordable (or free) transport home, which is subsidised from any surplus generated by entertainment.

Key issues raised by the proposed legislation

NUS Scotland has a number of concerns and question regarding the Bill. We will outline these clauses by clause, as they appear in the Bill:

Part 3 Premises Licenses
NUS Scotland would like to seek clarification on what constitutes a 'minor variation' in relation to the premises layout. Many students' associations operate as a hybrid environment, acting as a coffee bar during the day, a bar in the evening and as a night-club later. The Premises License will also pertain to the whole building in which only a small part is devoted to the sale of alcohol. Our reading of the Bill would suggest that any alterations to staff, sabbatical or volunteers' offices would not require permission from the Licensing Board. Clarification of this would be appreciated.

Part 8 Offences
We would like it to be noted that students' associations take their social responsibility seriously with regard to the sale of alcohol to children or young people under eighteen years of age. We note from the evidence session of the Committee meeting of 22 March that the Executive are keen to examine the use of the Young Scot card as a system of identification. The student movement would have no objection to this.

Students' associations often have members who are under the age of 18 which includes a minority of first year members that are seventeen years old when they first enter college or university. However, far from being vulnerable to underage drinking on their premises, students' associations believe they present very good practice in this respect. As part of a private members club, students must display their college identity card (revealing their date of birth) in order to gain access to commercial services in their student union building. Various methods are used to ensure that under age drinking does not take place on students' association premises, including the verification of age by security and bar staff. It should further be noted that students' associations can, and do, invoke disciplinary action when necessary circumstances arise. Student members can have their membership suspended if they attempt to buy alcohol under age, or purchase alcohol for a member that is under eighteen. Such a suspension (or even expulsion) has wider implications for their membership of college clubs and societies, and may prevent access to other services provided by the students' association. Guests of members must be signed in by a student member and remain the responsibility of the named member. Accordingly, NUS Scotland would assert that, by comparison with the opportunities elsewhere, students' associations are very well placed to ensure that underage drinking does not take place on their premises.
Part 9  Miscellaneous and General

Students’ associations by their very nature do not conform to the normal remits and expectations of licensed premises. Students’ associations are more than providers of alcohol to students, they are community centres run according to the values and conventions of mutuality. As a result, there is a special relationship between the membership, their elected officers (who have overall responsibility for the association), and the staff they employ. We welcome the special provisions set out for certain clubs in the Bill, but would request that licensing boards are given strong guidance to support mutual trading concerns like students’ associations, given the nature of their mission and circumstances.

Consequences of the Bill’s enactment

NUS Scotland and its member students’ associations have several concerns about the impact on trading and, in turn, the stability of students’ associations of the enactment of the Bill as it currently stands in relation to:

Retention of registered club status
Students’ associations are registered clubs and are run for the benefit of their members and not for profit. They seek to service the social and welfare needs of students and do not seek to operate solely as commercial ventures. The retention of this status would not only acknowledge the special nature of students’ associations, but also ensure that they are best placed to meet any future challenges.

The training of staff
Students’ associations take their responsibilities as employers and providers of alcohol and entertainment for students seriously. As a movement we are committed to supporting student development in all its forms, and see proper training for student staff as a development opportunity, not a burden. We do, however, have concerns regarding the potential difficulties in implementation for students’ associations, we would like to see more details in the guidelines, and look forward to working with local authorities on this issue.

Pricing of alcohol
In relation to deep price discounting, it should be noted that students’ association prices are only marginally cheaper than town centre prices, and this is an important function of students’ associations in view of the financial hardship faced by students. Indeed, many other venues are able to target the student market midweek by offering discounted prices. These discounted prices are then recovered by much higher prices at weekends that students cannot afford. By contrast, students’ associations cannot take advantage of a higher income clientele at weekends and raise prices. Students’ associations offer prices that reflect the low income of students, and any surplus is put back into the students’ association. It can be added that while commercial venues actively seek to attract student customers, students’ associations do not generally seek to attract non-student customers. Furthermore, students’ associations only trade for thirty-two weeks each year. There are, therefore, clear limits to the extent to which students’ associations can in any way be perceived as operating for profit rather than for the benefit of their members.

The introduction of a 48 hour period, whereby the price of any alcohol sold on the premises must not be varied, will hit students’ associations harder than their commercial competitors, for the reasons stated in section four, and will not address the issues it seeks. We would like to see the Bill amended so Licensing Boards have the discretionary power to approve variation within the 48 hour period under certain circumstances.

Irresponsible drinks promotions
NUS Scotland and its constituent members take the issues surrounding alcohol and health seriously. Students’ associations conduct safe drinking and health awareness raising campaigns and initiatives, and provide welfare services for students that provide advice and accessible information on a variety of issues, including alcohol consumption.

NUS Scotland would distinguish between promotional offers that advertise a new drink, or raise the profile of a product, and irresponsible attempts to increase the volume of alcohol consumed in a short space of time. The problems of ‘binge drinking’ can be especially acute when alcoholic drinks
are made free for a fixed entry fee, or sold in large quantities for a fixed discounted price. Many students' associations have agreements with their parent institution concerning healthy drinking, and take their responsibilities towards the welfare of students seriously. The type of promotions which students' associations typically undertake, would, in our opinion, not conform to the definition set out in Schedule 3 of the Bill.

In the past twelve months, NUS, in conjunction with the Greater Manchester Police, NUS Services Limited, and Diageo, has piloted its ‘Best Bar None’ Awards Scheme which promotes good practice in the areas of: door policy; drink and drugs; crime prevention; security; the environment; and general safety. Following the successful pilot scheme and the first annual awards at the NUS Services Limited Convention last month, it is now being rolled out on a national basis.

Conclusion

NUS Scotland is supportive of the key principles firstly set out by the Nicholson Committee, and then reiterated in the Bill. We believe that better regulation of the licensed trade sector as a whole can only benefit students, both as learners, and as citizens of a modern, healthy Scotland. We generally congratulate the Executive on both their policy and the proposed legislative framework, but we would like to ensure that students' associations have a strong voice in the preparation of guidelines to be issued for licensing boards. We would like to see greater detail regarding the implementation of the Bill, and a considered reflection of the special nature of students' associations in this area.
On resuming—

Licensing (Scotland) Bill: Stage 1

The Convener: Our next agenda item is further consideration of the Licensing (Scotland) Bill. I welcome Patrick Browne, the chief executive of the Scottish Beer and Pub Association, and Sue Allen, the vice-president of the association. I apologise that we overran slightly on our previous item of business—I hope that we will not detain you for too long. I ask Patrick Browne to make his introductory remarks on the bill, after which members will ask questions.

Patrick Browne (Scottish Beer and Pub Association): I thank the committee for the opportunity to give evidence on the Licensing (Scotland) Bill. I have with me Sue Allen, who is the regional director in Scotland for Punch Taverns. The Scotland on Sunday newspaper recently described her as Scotland’s top landlady. Punch Taverns operates 450 of Scotland’s 5,000 pubs, which makes it the country’s largest pub operator by far. Sue is also vice-president of the Scottish Beer and Pub Association.

I do not propose to go over all the detailed evidence that we submitted to the committee. Our association has consistently supported the Nicholson committee’s unanimous package of recommendations; indeed, our former chief executive, Gordon Millar, was a member of that committee. Given the evidence that the committee took last week from the Scottish Licensed Trade Association, I point out that our association and other elements of the trade have differences on some of the issues.

Our association does not support the view that there is a general over-provision of licensed public houses in Scotland. The number of licensed pubs has increased by more than 14 per cent in the past quarter of a century in Scotland, while the number of off-licence premises has increased by 25 per cent in the same timeframe. Given that alcohol sales account for only 56 per cent of the average pub’s turnover, we do not believe that there is a general over-provision of licensed pubs. Particular issues may exist in some locations, but they can best be addressed through the operation of the market and by licensing boards exercising their local knowledge and expertise. 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.
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. 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.

The bill will lay solid foundations for the future of the licensed trade in Scotland. The bill broadly implements the unanimously agreed proposals of the Nicholson committee, which we support. We look forward to working with the Scottish Executive and the Parliament to ensure the passage of a bill that produces a licensing system that is fit for the 21st century by responding to the needs of the Scottish public, but which balances that against the need for action on alcohol misuse and effective action on irresponsible promotions.

Mr Davidson: Where you disagree with the proposals in the bill, will you spell out what you would put in their place?

Patrick Browne: We disagree with some of the details of the bill. The main issue is probably the duty to assess over-provision. At present, licensing boards use their local expertise and knowledge in making judgments about over-provision. Our concern about the strategy of having a national licensing forum that will arrive at a formulaic assessment of over-provision is that the local knowledge and expertise that the boards have traditionally used will be lost and will be replaced by a central method of decision making. We would prefer boards to continue to be allowed to exercise their local knowledge in making judgments about over-provision.

Mr Davidson: Do you think that the market will play a big role? You have heard some of the evidence that there has been a tendency to be defensive about allowing in new entrants or new products, however you want to describe them. Should the market decide whether something survives?

16:00

Patrick Browne: Individual licensing boards should be free to judge whether there is over-provision in particular locations. Our concern about the provisions in the bill on over-provision is that they could lead to no new licences being granted in particular areas, which would drive up the paper value of licences in those locations. New operators that try to access those markets would have to pay a premium for their licences, which would leave them with less cash to invest in those businesses if they were successful in taking them over. There is a particular problem with dealing with competition issues by locking down the market in that way.

Mr Davidson: I therefore presume that you are against any linkage between a licence and the capacity of an establishment.

Patrick Browne: Individual licensing boards have to judge whether the relative size of premises will meet demand in a local area or lead to over-provision. There is a danger that local knowledge and expertise will be lost if some kind of formulaic assessment of over-provision is used.

Mr Davidson: You said that you would welcome a single licence that covers all forms of establishment, be it off-sales, on-sales or whatever. What is your view on over-provision and controls for off-sales?

Patrick Browne: At the moment, something like 40 per cent of alcohol sales are in the off-sales sector. That trend has developed during the past 20 or 30 years in response to customer preferences and the fact that the consumer can now access alcohol from a variety of sources and in a variety of ways. The traditional blurring between the on-trade sector and the off-trade sector has been removed in the past 10 to 20 years. People get their alcohol from various sources and they drink in various environments. Again, individual licensing boards should judge whether there are too many off-sales or on-sales premises in a particular location.

The Convener: Bruce Crawford has a supplementary question, but first I have a question. Would having only one type of licence make it more difficult for the licensing board to make a decision on over-provision when it believes that such over-provision is within one sector? Some of the argument for having more than one type of licence is that different forms of knowledge and training are necessary for running a pub in comparison with what is required for running an off-sales establishment. Is that a legitimate argument for having different types of licence for those two types of premises?

Patrick Browne: We welcome the development that there will only be one licence. As I said, in the past 20 to 30 years, there has been a blurring between the different types of premises, whether they are pubs, restaurants or hotels. For example, hotels increasingly tend to operate hotel bars as pubs.

Under the new regime, licensees or applicants will be obliged to give an operating plan to the licensing board. The board should be more than capable of judging not only how premises will operate, but the conditions that should be imposed.
on an operation’s practice and procedures. The board should be able to regulate premises effectively.

On training, I understand that discussions are taking place in the industry about introducing new training requirements in the new regime that will be created by the bill. That will allow different managers to specialise in different areas, such as supermarket off-sales operations or pubs. Training will be tailored to specific types of operation under the broad umbrella of a certain set of qualifications that every operator should have. It is entirely feasible to deal with training and the conditions that must be imposed on premises in the operating-plan approach that is outlined in the bill.

**Bruce Crawford:** I want to try to get under the over-provision issue and build on what the convener said.

Thank you for your written evidence, which was well presented and which allowed me to understand what you seek to achieve. I understand your position on over-provision, but I wonder whether you would change your mind on the number of types of licences if there were a new, formulaic way of dealing with over-provision. I might be wrong, but there could be a danger that the licensing board in a certain area would decide that because it had already issued X licences for that area—even though they might all be for off-licences—it would not issue any more. If the process was formulaic and there was only one type of licence, there could be a danger that new pubs that wanted to open up in a given locale would not be able to do so because they were trapped by the assessment that over-provision existed.

I realise that the fact that we are talking about an imaginary scenario might affect how you couch your answer, but if the Executive took that route, would that change your mind about the number of licence types that should be available? Would you still think that there should be only one type of licence or would you agree with the Scottish Licensed Trade Association that there should be three types of licence?

**Patrick Browne:** The creation of one type of premises licence would be a welcome development. At the moment, many licences are dependent on classifications of premises that no longer apply. Our view is that rather than the Executive taking a formulaic approach by issuing national guidance, it would be preferable if local licensing boards were able to use their knowledge and expertise when making such judgments. The operating plan should make it entirely possible for a licensing board to make a judgment about the different ways in which a premises will be operated and to decide, for example, whether it should grant a supermarket a licence or allow an additional pub application. It should be feasible for such distinctions to be made in the wording of an operating plan.

**Bruce Crawford:** You would make a good politician, because you successfully avoided discussing the scenario that I described. I understand why you might have wanted to do that, but if there was a formulaic process—you couched your answer in such a way as to suggest that there should not be—would that change your mind?

**Patrick Browne:** Obviously, if a formulaic approach were adopted by the national licensing forum, the trade and applicants would have to deal with that, although it would still be for individual licensing boards to regulate the situation. Our preference is for local boards to be allowed to use the expertise and knowledge that they have developed rather than to have central guidance on an issue that is largely determined by local factors.

**Bruce Crawford:** I accept that, but I am concerned about what would happen if a formulaic approach that did not suit your organisation were adopted.

**The Convener:** We will come back to Bruce Crawford’s other questions shortly.

**Paul Martin:** My first question relates to some of the evidence that we received from the Glasgow community representatives on the impact of licensed premises on local communities. Examples were cited of how licensed premises can have both external and internal disturbances and of how that can impact on communities. Do you acknowledge that there is a need for licensed premises to invest in the surrounding environment, whether through closed-circuit television or greater involvement in activities such as clearing litter? I realise that it would be difficult for you to say that you would welcome such developments, but in a large number of premises, investment seems to be focused within the premises.

**Sue Allen (Scottish Beer and Pub Association):** If the members of a community have a legitimate issue with the operation of a licensed premises, it is right and proper that they should be able to raise it, as is the case under the current licensing legislation and with environmental health matters. If someone has a genuine, material issue to raise, it is right that their case should be heard. However, I am concerned about the suggestion that the neighbour notification radius around a licensed premises should be extended to 50m. My worry is that, in more urban areas, that would mean that an awful lot of notices would have to be sent out to local people.

**Paul Martin:** I was wondering whether there should be a levy. I know that it is difficult for you to
support that idea, but do you acknowledge that community representatives have asked why the council should clear up all the litter and deal with the other aspects of behaviour that licensed premises encourage; why should we pay the police bill for the large number of call-outs to licensed premises; and why owners of premises do not fit a CCTV system to serve not just their premises but the community? Could we include something in the bill that would give people a bit more confidence that licensed premises are working with the community? At the moment communities think that proprietors focus purely on the inside of the premises.

Sue Allen: My concern about having general guidance is that one size never fits all. If there is a specific issue at a specific premises, that should be dealt with in the operating plan and by the local licensing board. However, I understand where you are coming from. The argument is the same for other retailers, such as McDonald's, being responsible for picking up the litter outside their premises, which I support fully. My concern is about generalising too much.

Patrick Browne: As responsible operators, our clear view is that if a premises is causing problems the licensing board and the police should address those problems and, if necessary, shut down the premises. We are not in favour of bad operators being allowed to continue to operate if they are causing problems for their neighbours in the community. If there is an identifiable need for CCTV, I am sure that individual operators would consider that. Under the bill, depending on premises’ operating times, there will be scope to impose additional conditions on the licence, which might include the installation of CCTV cameras, although we have concerns about CCTV being imposed on all premises irrespective of whether it is required.

Paul Martin: You said that the marketplace will take care of all the competitive factors. How fair is the marketplace at the moment? Having large groups of branded pubs seems to minimise the opportunity for the smaller proprietors to make a profit. How fair is it to throw everybody out there and let them get on with it, given that there are anti-competitive processes that do not encourage the existence of the small pubs that people used in the past? We have seen such pubs close down as the branded pubs have expanded.

Patrick Browne: It is not just about the operation of the market; pubs operate within the regulatory environment of the licensing system. However, the marketplace has a role in putting out of business pubs that are not very good or allowing the owners of such premises to sell them to somebody else who can operate them more effectively.

It is not just about the superpub chains. Punch Taverns operates 450 pubs, which are part of a brand. Each pub operator in effect runs an independent small business. The pubs are managed independently and, in many cases, are leased. It is not about taking a one-size-fits-all approach to the industry. There are a lot of independent operators out there. We represent 1,500 of the 5,100 licensed public houses in Scotland. It is therefore difficult to argue that our members are dominating the marketplace, because there are many independents out there.

Paul Martin: Do you accept that the marketplace will not always take care of the issues that you have raised? A number of large branded pubs have taken measures that are making things difficult. We have to accept that it is not just the weak that are unsuccessful; people who have run pubs for many years find themselves unable to compete with the larger, branded pubs that are clearly marketing against them.

Patrick Browne: Public houses operate within a regulatory environment. If they were pursuing anti-competitive practices, I am sure that this Parliament or the Westminster Parliament would address that. The industry has recently been the subject of investigations by various parliamentary committees. The pub trade operates in a regulated, licensed environment, so it is not just about the market.

16:15

Margaret Smith: I want to pick up on Sue Allen’s concerns about the intention to increase the radius for neighbour notification to 50m and to seek your views on the proposal to allow any person to object. You say that you are opposed to the 50m neighbour notification radius, which your helpful submission explains is because of the cost to the boards of that extra level of notification. It could be argued that your opposition arises from your belief that you are likely to get more objections if more people get notifications. However, you could not argue that those people do not have an interest in what is going on in a public house or other establishment within 50m of their home.

You also say that you are opposed to allowing any person to come forward with an objection. Who do you think has a right to object? How can we come up with something that takes on board not only the needs of businesses but the needs of the communities that are dealing with many of the issues that Paul Martin mentioned?

Sue Allen: I do not think that we object to the proposal to allow any person to object to a licence, but objections should be real, material and commonsense rather than frivolous or vexatious. I
know from experience that if there is a problem with a pub, that is well communicated in the area. Objections from many people are already heard by our local licensing boards and it is right that people should have a right to say that they are affected by the way in which a licensed premises is operated. I have no objection to people being able to object.

My worry about the 50m proposal is—again—that one size does not fit all. If we are talking about a rural pub, a radius of 50m might be right because that might only encompass 10 houses or neighbours. In an urban area, however, there might be a workload and administrative issue with a one-size-fits-all approach. I would like the right to object to be limited to people with a real, material and commonsense reason.

**Margaret Smith:** You are saying that it is more reasonable for someone who has a real, material objection to be able to object than it is for someone who lives within an almost arbitrary 50m boundary. I hear what you are saying about the rural dimension, but although it might be an extra administrative burden for a board in an urban area to let people know what is happening with an application, the impact of living within 50m of an urban pub in, say, Edinburgh’s Grassmarket can be quite considerable and the impact on someone’s life is likely to be greater than if they were living within 10m of a rural pub in the middle of Inverness-shire. You seem to be arguing that any person who has a commonsense reason should have the right to come forward with an objection. That is the existing position and you would be quite happy for that to continue.

**Sue Allen:** Yes.

**Dr Jackson:** I will ask about the national training requirements that are mentioned in the bill. Are the provisions for personal licence holders adequate and appropriate? The submission from the Convention of Scottish Local Authorities says:

“There remains a degree of discomfort among local board chairs that personal licenses can be held for ten years, even with refresher training. The concern is that this risks less control by boards over their activities”.

**Sue Allen:** As a member of my association and as a representative of my company, I welcome the inclusion of training in the bill. It will do the industry a lot of good to uprate the training that is given and for training to be made mandatory.

Indeed, Punch Taverns in Scotland will not grant a lease of a licensed premises to anybody who has not undergone mandatory training with us. People are required by the current board not only to hold the Scottish licensee’s certificate but to undergo a two-week mandatory training programme that takes into account drug awareness as well as licensing law, environmental health issues, employment law and equal opportunities. As a company, we very much support the training requirements in the bill. In fact, I have told Mr Crawford that we would be happy to extend our training to people who do not take our pubs, if that would be helpful.

**Patrick Browne:** The issuing of a personal licence for 10 years was one of the recommendations of the Nicholson committee. We are relaxed about that because if someone who holds a personal licence abuses their position or is found to be operating incorrectly or out of line with the regulations, they will be brought in front of the licensing board and the matter will be dealt with. Rather than our having any difficulty with someone having a personal licence, there is a presumption that people will have such licences and that if they abuse their position, the matter will be dealt with. We would support that.

**Dr Jackson:** There might be quite a high turnover of bar staff. What sort of training do you think that they should have?

**Sue Allen:** I assume that you are referring to casual student employees who work in bars only for a matter of weeks. 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. They should be supervised during their shift. I cannot see how we could possibly make training mandatory for such temporary workers.

**Bruce Crawford:** Some people are concerned about the additional costs that the new proposals will involve. In particular, licensing standards officers will be involved in the process. What is your view on that? Should the cost of the new licensing process be met from general taxes or should it be self-financing through fees? What methods should be used to set the fees? We have had a fair bit of discussion about whether the fees should be based on property, turnover or profit. Which should it be?

There may be one licence, but there will continue to be different types of operation. How will the system of fees recognise the different types of operation? A small pub will be entirely different from a large club—by that, I mean a disco-type club. “Disco” is probably an old-fashioned word—it shows you how old I am—but you understand where I am coming from. We need to hear what you think about that. I have not reached any firm conclusion, although I have heard a fair old plethora of evidence about the variety of methods that might be used.
Patrick Browne: The difficulty is that that detail is not in the bill, for understandable reasons. We are told that the Executive will produce detailed proposals before Parliament has completed its scrutiny of the bill.

As an organisation that signed up to the Nicholson committee, we accepted that the introduction of a new regime with new responsibilities and people, including licensing standards officers, will inevitably lead to increased costs. Inevitably, larger premises will have to bear more of the burden of that. We have accepted that and have put that on record. In England and Wales, there has been a quadrupling of the fee and the costs on the industry, which causes us concerns. 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.

Bruce Crawford: That is useful. In fact, there were some interesting faces behind you when you made that comment.

The Convener: Are you about to go into a different area, Bruce?

Bruce Crawford: No, I want to tease this matter out a little more, because I think that we might be facing a problem. The minister might well suggest such proposals, but those proposals might not emerge during our evidence-taking sessions. As a result, we might not get another chance to ask these witnesses about the type of fee arrangement that might be appropriate. I cannot imagine that your organisations have not discussed this issue, but it might well be that you have not reached a conclusion on the right way of doing this. I realise that you might not be able to deal with the matter today, but it would be useful if you provided further written evidence on whether fees should be set according to profit, turnover, property size or number of customers. I do not know how the heck you will do that, but such information will be useful.

Patrick Browne: I am more than happy to ask my organisation for a response to that question. However, I will say that, as far as the licensed trade is concerned, such a mechanism already exists. For example, the way in which the current business rates structure directly relates the turnover of a premises to the rates that it pays is pretty transparent.

Bruce Crawford: I know that the business rates mechanism is slightly different for hotels and pubs. They are not treated in the same way as other businesses.

Patrick Browne: My evidence suggests that our members are happy with the fact that the current business rates structure relates their turnover to the amount of rates that they pay. Again, I am happy to seek a response from our members on that matter.

Bruce Crawford: That would be useful.

The Convener: You have already raised your members’ concerns about potential gold-plating. Where in the bill might that occur?

Patrick Browne: Concerns have been raised about the fact that some elements of the local authority licensing mechanism, which has operated for a number of years, are self-financing while others are not. For example, many licensing boards draw on services in their local authority to provide the licensing mechanism and perhaps do not fully recharge them.

We are concerned that, under the new regime, local authorities will lose their current ability to meet some costs through expenditure of the money raised from business rates and that they will start with a blank sheet of paper. We must ensure that the number of licensing standards officers in a licensing board area relates to their workload. After all, the boards’ operating costs must reflect the fact that the range of premises to be regulated will be far wider in urban areas than in rural areas. It is difficult to speculate on 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.

Margaret Smith: I suppose that the question was more about potential gold-plating in the bill.

I do not know whether you have had a chance to read the evidence that we received last week from the Scottish Licensed Trade Association, but it seemed to feel that grandfather rights should be introduced to ensure that businesses face as little upheaval as possible and know exactly where they stand. In fact, such a measure has been introduced in England and Wales to allow people to move seamlessly from the old system to the new one and, even if a new eye can see that certain premises fail to come up to scratch, people just have to live with that.

However, the public—and, indeed, many committee members—believe that the bill presents an opportunity almost to improve on the services that have been available in the past. Your proposals for transitional arrangements seem to suggest that, although you believe that there should be grandfather rights, any such measure
should contain safeguards for objectors who feel that premises do not come up to scratch. However, you think that a licence should not be withheld unless it can be proved that a premises cannot be brought up to scratch. Is that a fair reading of your organisation’s position? You are committed to grandfather rights, but you are sympathetic to the view that there might be an opportunity to improve premises and services.

16:30

Patrick Browne: I agree in part with what you say. We set out our position on grandfather rights in detail in our submission. A precise form of words must be used.

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.

Margaret Smith: In your submission, you say:

“If an objector can demonstrate that the operation of any such business materially contradicts the Licensing Objectives then a premises licence for an established business should only be refused if the draft operating plan for such business cannot reasonably be amended.”

I take it from that that you do not think that licensing boards should say, “Here’s someone who has had a licence for 12 years, so we will automatically rubber-stamp his licence.” I am reading between the lines, but I understand from your comment that you believe that there should be due process and that although there should be a presumption that the licensee should keep their licence, there should be no rubber-stamping exercise, because there might be scope to consider other issues.

Patrick Browne: I agree with that assessment.

The Convener: Your submission indicates that you are quite comfortable with the provisions on statutory permitted hours. Are you perfectly happy that there will not be distinct regional variations in licensing boards’ approaches to permitted hours?

Are you concerned about the lack of a simple process for occasional extensions of permitted hours?

Patrick Browne: If we accept the Nicholson recommendations and the bill, 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.

There is a real issue about occasional extensions. The Scottish Executive has indicated that it considers that such matters will be dealt with by part 4, on occasional licences, but the trade does not accept the Executive’s position. We think that the provisions will not allow boards and applicants to deal with, for example, office parties or wedding receptions that take place at short notice. There is a need for new provisions that will address such matters.

The Convener: Finally, on irresponsible drinks promotions, how comfortable are you with the bill’s provisions in relation to the on-trade? It has been suggested that there is an omission in the bill, in that there appears to be no requirement on the off-trade with regard to what might be regarded as irresponsible drinks promotions.

Patrick Browne: We support action to tackle irresponsible promotions. The Executive has taken such action in the bill, but we have a slight concern because promotion is not just about selling drinks at reduced prices at certain times; it is also about promoting new products in the marketplace or trying to encourage people to switch from one brand to another. For example, we might need an opt-out for promotions of new products, but that is a matter for the committee to judge.

We have a particular issue with the exemption for the off-trade. The anecdotal evidence from our members is of an increasing pattern of people consuming alcohol at home earlier in the evening and then going out later and passing on the problems of binge drinking to the on-trade. A restriction on irresponsible promotions will address the situation effectively only if we ensure that it applies to both the on-trade and the off-trade.

I am not trying to plug the publication, but in the Scottish Licensed Trade News of 17 March, Jack Law, the chief executive of Alcohol Focus Scotland, made a relevant point. He said:

“We’re extremely concerned that the bill has failed to address off-sales promotions. Some might argue that alcohol bought in these instances is stored for drinking over a long period of time. It’s difficult to be convinced that a two-litre bottle of cider retailing at £1.40 is designed as a product for sipping over several evenings.”

Clearly, the issue must be considered in more detail.
The Convener: You have certainly finished your evidence on a high with that observation. I thank you for your evidence, which has been useful and which will help the committee in its consideration of the bill.

The second panel this afternoon is made up of witnesses from the Argyll and Bute and city of Edinburgh licensing boards. I welcome to the committee Councillor Duncan MacIntyre, the chair of the Lorn, mid-Argyll, Kintyre and Islay divisional licensing board; Councillor Rory Colville, the vice-chair of that divisional licensing board; Councillor Daniel Kelly, the chair of the Bute, Cowal and Lomond divisional licensing board; Councillor Philip Attridge, the chair of the city of Edinburgh licensing board; and Robert Millar, the clerk to the city of Edinburgh licensing board. I give the witnesses an opportunity to make an opening statement, although that is not an invitation for all five of you. Councillor MacIntyre will lead on behalf of Argyll and Clyde.

Councillor Duncan MacIntyre (Lorn, Mid-Argyll, Kintyre and Islay Divisional Licensing Board): I thank the committee for inviting us today. We are not Argyll and Clyde—that is the health board.

The Convener: Sorry, I meant Argyll and Bute.

Councillor MacIntyre: You have already introduced the members of the Argyll and Bute licensing board. A number of years ago, Argyll and Bute Council decided to divide its area into two divisional licensing boards: Bute, Cowal and Lomond divisional licensing board and Lorn, mid-Argyll, Kintyre and Islay divisional licensing board. I am chairman of the Lorn board and Daniel Kelly is chairman of the Bute one. I understand that the note that we prepared has been circulated to members of the committee, so I do not intend to go through it. I hope that during the meeting we will have the opportunity to expand on the issues that are raised in the note. Given what happened in the previous session, that will be quite interesting.

We welcome the publication of the Licensing (Scotland) Bill, which is a long-awaited piece of legislation. Obviously, there is still a considerable amount of work to be done on drafting the associated regulations and guidance, and we look forward to seeing them in due course.

In our area, there is an increased prevalence of young people consuming alcohol to excessive levels. We have found the problem to be more and more common, and I am sure that we are no different from the rest of Scotland. We hope that many of the measures that are set out in the bill will assist with tackling that worrying trend. Although we recognise the importance of having a national policy framework, it is crucial that licensing boards retain a high level of flexibility and accountability to enable them to respond effectively to local circumstances.

Councillor Philip Attridge (City of Edinburgh Licensing Board): I do not have much to add, except that I welcome the golden opportunity that you have to solve what are common problems in Scotland. I ask Robert Millar to enlighten the committee on a small correction to our submission.

Robert Millar (City of Edinburgh Licensing Board): We welcomed the opportunity to lodge a written statement but, unfortunately, in the rush to prepare it we made a mistake. In the paragraph on the size of boards, we refer to a minimum of 10 members. Of course, the bill proposes a minimum of five members, so our submission should read “five and three”, not “ten and three”.

The city of Edinburgh licensing board’s concerns are very much reflected in the Executive’s published intentions. The board has not yet had an opportunity to consider in detail many of the provisions that will come out in the form of regulations. Unlike some of the deputations from which the committee has already heard, the board has not yet put forward any views on matters such as transitional arrangements or grandfather rights.

Michael McMahon: I represent an area in which divisions in boards are not uncommon. The idea that a licensing board has to cover a whole local authority area seems to relate to some areas but not all. In the evidence that we took in Glasgow last week, concern was expressed to us about the proposal that the Glasgow licensing board should be divided, instead of having a single board with fewer members covering the whole of Glasgow. I am interested in hearing your perspective on the proposals on the size of boards, and particularly on the idea of licensing boards with five to 10 members. I am aware that some licensing boards are almost the size of some councils, and I would like to hear your perspective on the idea that they could not operate if they were smaller. I seek responses from you on the scale of licensing boards. How many members do they need if they are to work?

Councillor MacIntyre: In Argyll and Bute, there are two distinct geographical areas, as I explained. Members come from various parts of Argyll and Bute and they bring to the boards their local knowledge of the issues. For example, a few weeks ago, four members were in favour of something that had been proposed in their own area, but the members from outwith the area opposed it. Members have a local perspective on matters that affect their areas. The number of licensed premises in Argyll and Bute is in the order of 640—I shudder to think what the figure per head of population is. We have to deal with a lot of
licences throughout a wide area, so we rely on local knowledge.

16:45

**Councillor Attridge:** One of our major concerns is that in a city the size of Edinburgh, which is developing at a huge rate, and to which everybody wants to come to open clubs, luxury hotels and so on, we need consistency of grant. If the grant is too small or boards are very small, we will not get the required breadth of knowledge from the city.

Our city centre is growing at a great rate. I represent Leith. There is the area at the bottom of Leith Walk around the Shore, and there is the city centre. From around half a mile down Leith Walk you could say that the area is not in the city centre, but Leith will shortly be in the city centre. The city centre will then spread west.

We 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.

**Michael McMahon:** We are trying to tease out the arguments. In evidence last week we heard one perspective, which was that if local knowledge was used and the people who made the decision were local to the area, they might be susceptible to local pressures, whereas if the board included the wider geographical area, local pressures would dissipate, and decisions could be made without pressure from local communities. What are your views on that? I see that Councillor Attridge is keen to get in, so I will take him first.

**Councillor Attridge:** Boards have two types of members, who can be easily classified as openers or shutters. If you have small boards, you can bet that premises will not be opened, which would be unfair on those people who wish to come into and develop the city. We need development. We are a major tourist attraction. We need consistency and breadth on boards, which will take the wind out of the sails of parochial nimbys.

**Councillor MacIntyre:** Rory Colville wants to answer as well, but I refer again to a recent debate and vote that we had on a proposal: local councillors voted for the proposal, but people from outwith the area voted against it. That gives a good indication of the situation.

**Councillor MacIntyre:** Rory Colville wants to answer as well, but I refer again to a recent debate and vote that we had on a proposal: local councillors voted for the proposal, but people from outwith the area voted against it. That gives a good indication of the situation.

**Councillor Rory Colville (Lorn, Mid-Argyll, Kintyre and Islay Divisional Licensing Board):** I agree with the provisions in the bill that would allow boards to divide if they wished. We say that we have a drink culture in Scotland, and we certainly have a different culture in Islay and Mull. With all due respect to Danny Kelly, I do not think that the councillors in Helensburgh would fully understand that culture. We have 26 islands in the Lorne, mid-Argyll, Kintyre and Islay area. We need to have local knowledge. It is important that we retain the right of boards to decide to divide.

**Michael McMahon:** So you are happy for the bill to allow horses for courses.

**Councillor Colville:** How do you mean?

**Michael McMahon:** Just as you describe it. Boards should be allowed to divide where it is appropriate to do so, and boards in cities should be allowed to take a wider perspective and to be as broad as possible.

**Councillor MacIntyre:** There has to be that flexibility.

**Margaret Smith:** I have a couple of issues. The bill proposes that any person will be able to object, as opposed to the present position. What do you think of that? What will be the implications for your boards if that proposal goes ahead? Could you also address the issue that I touched on with the previous panel, which is the proposal to increase the area for neighbour notification around licensed premises, to try to involve the public in decisions to a greater extent? How can we find ways to engage with the public on these important issues without it always coming down to nimbyism, which Councillor Attridge mentioned?

**Robert Millar:** The Edinburgh board is happy to embrace the inclusivity that is suggested and to bring more people into the process. I am sure that the convener of the board agrees that one of the big problems is that many objectors go part of the route in lodging objections. They will attend a board meeting and then meet a technical problem that means that their objection is declared incompetent and they must walk away from the meeting without being heard. That is unsatisfactory for members, highly unsatisfactory for the individuals who are involved and unnecessary. Those people will have failed to clear a technical hurdle.

The aim behind the proposed legislation is to sweep away such things and allow persons who have an interest in making an objection to make it. 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.

Margaret Smith: Are you quite relaxed about the point about neighbour notification?

Robert Millar: Yes. I understand that there will be a duty on the clerks, but, as long as the resources are there to carry it out and the clerks are properly resourced to serve notices, that should not be an issue—the process is administrative.

Margaret Smith: Do the gentlemen from Argyll concur with that?

Councillor MacIntyre: We endorse what has been said. We are in favour of the involvement of as many people as possible. However, planning applications for buildings attract objections from across the world. Where does it end? We need to be sensible. We are keen to hear valid and competent objections and to let people have a voice, but there must be some perspective.

Councillor Colville: I have a point to make about occasional licences, about which we would like to say something at some stage.

Margaret Smith: My next questions are indeed on occasional licences. Board members have highlighted concerns about the proposed number of such licences and the training of staff. I want to tease out a little what your proposals would be and what would be reasonable. In responding, Mr Millar could pick up on what Councillor Colville has said about the extra administrative work that would be involved.

Robert Millar: The Edinburgh board already operates a system in which there is notification of occasional licences. The current system requires the applicant to notify the chief constable, but a great many applicants do not do so in practice. A process has therefore developed over the years whereby there is, in effect, notification. It is clear that there will need to be more notification but, as I said, that is a matter of resources. Through the increased use of information technology and the geographic systems that are now being introduced with IT, it is possible to identify premises that require to be notified. If the system is in place and properly operated, it could do the notification itself. Therefore, I do not see the issue as being a major problem.

Patrick Browne said that there needs to be a procedure for occasional extensions, but I am not convinced of that. I had envisaged that, certainly in cities such as Edinburgh, the board’s statement of policy could indicate what occasional extensions the board would be prepared to recognise, so as to cover the Edinburgh festival and the winter festival period, for example. Provisions could be built into the statement of policy for special occasions such as parties, when in any event the board usually operates an extra-hour procedure. I think that occasional extensions could be accommodated within operating plans and boards’ statements of policy.

Councillor Attridge: 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.

The Convener: Before we go on to Argyll and Bute, I will pursue questions with Robert Millar about the process that he would expect to be followed under the new regime to deal with occasional licences.

Robert Millar: For occasional licences, as opposed to occasional extensions?

The Convener: Sorry—occasional extensions.

Robert Millar: The board’s statement of policy would be the starting point. The board would have to indicate—I will take Edinburgh as an example—that, during the period of the Edinburgh festival and the winter festivals, an automatic two-hour extension to normal hours would be granted to premises and that perhaps for other events a one-hour extension would be allowed. The premises would indicate in their operating plan whether they intended to take up the extra hours. Thereafter, there would be no further notification for occasional extensions.

The Convener: Would that process cover not only major events such as the festival but matters such as a wedding booking?

Robert Millar: The nature of the premises would need to be taken into account. If the premises regularly operated a wedding business, it would be able to deal with the matter through its operating plan. If a premises were being refurbished, for example, and there was an intention to move into that market, that would be a major variation
anyway and the public would have the opportunity to come in at that point. The board would determine whether the premises were suitable for that business.

Bruce Crawford: If ad hoc occasional licences were required, do you envisage that a licence holder could submit in their operational plan that they wanted 12—or any other number of—ad hoc occasional licences a year to allow them to deal with unexpected circumstances? Would the operational plan be the appropriate place to do that? How would you deal with those situations?

Robert Millar: The board would have to indicate that it was prepared to consider requests for ad hoc extensions in the operating plans. The bill seems to suggest that, if there is an ad hoc extension, the operator of the premises is making a major variation. We need to consider, perhaps in a way that has never been done before, the type of business that operates on the premises. That is what the boards will be doing with the operational plans. If the premises already has in place a function suite that is used every weekend for an ad hoc function, be it a wedding or an anniversary celebration, that is taken into account in the hours that are granted.

Bruce Crawford: My concern is that we will be in a situation where the fees will go up. It is a nap that will happen. Some businesses will face pressure on their books because of the legislation on smoking in public places and will have to be fleet of foot to stay alive. We must find ways of enabling those who are capable of changing their business profile in order to stay alive to do that. Perhaps that means that some sort of ad hocery should be built into the operational plan. If that was going to happen, some sort of national standard would be needed. Do you support the idea?

Robert Millar: Yes.

17:00

Councillor Daniel Kelly (Bute, Cowal and Lomond Divisional Licensing Board): There are a fair number of voluntary organisations in Argyll and Bute and many of them ask for occasional licences. That gives the licensing board and the police quite a problem, especially on the islands, because of the nature of some of the functions.

Margaret Smith: How much of that is caught up with the issue of lack of training for the people in voluntary organisations who organise these occasions? How big a problem is it?

Councillor Kelly: It is a big problem. The staff in many of the voluntary organisations have not had any training, but we would like them to.

Mr Davidson: Years ago, when I worked in Edinburgh, some of the licensing authorities decided that if an organisation wanted a bar—say for a school fete—a local licence holder had to deliver it by making the application and so forth. Is that sort of arrangement for one-off occasions under consideration? If so, would the local licence holder be required to be present in person and to be responsible for the occasion?

Let us say that a local rotary club wants to hold a function. Would the suitably qualified person who made the application for the licence act as the named individual who supervises the occasion? I return to the point that Councillor Attridge made. If boards give people automatic extensions, I assume that the extensions will also have to be recorded and notified to the police so that the police know what they are enforcing.

Councillor Kelly: Yes.

Councillor Colville: The practicalities of the proposal would not work on the islands. We have looked at the idea, but licensees are not interested in running those sorts of occasions at the moment. The trouble with occasional permissions is that they are considered part of the culture in certain remote areas—what else is there to do?

The problem is that the number of occasional licences is growing, particularly in Islay. The police, the local substance misuse forum and the national health service have brought to our attention problems relating to alcohol on Islay. They point the finger at the number of occasional licences that are granted on the island.

As the board has not yet met to discuss the issue, I stress that what I am saying is not what the board has decided. I am not sure whether we would take a definite view on the number of occasional licences—let us say four or more—but we are absolutely certain that, if we are going to grant occasional licences, there has to be training. If someone is selling hamburgers, they have to go on a food hygiene course, yet we allow people to sell a licensed drug without any training.

To give one example, the reality of the situation on Mull is that one policeman is on duty. We have granted 2 am extensions to two premises, which are half an hour apart, and if occasional licences are running elsewhere on the island, it will take the policeman four hours to get round all the premises. We are putting an awful lot of faith in the people who are running organisations. We are asking them to be responsible, know when people should stop drinking and know the age of the people whom they are serving. A host of issues is involved, none of which is being addressed at the moment. On Islay, four policemen are on duty at any one time. The policing situation is similar to that on Mull.
I am also concerned about occasional extensions, although the board may come to a different conclusion on the issue. If premises are granted a licence that runs to 2 am or 3 am, they could use it as and when they see fit. That puts a huge strain on police resourcing. Things got so bad in Oban one night that the police had to draw batons. On that occasion, the police could cope because they knew when the closing time was. However, our board may take a different view of the issue from that taken by a city-based board.

Councillor Attridge: I will take up what Mr Crawford said about people having to look about for opportunities when the smoking ban is introduced. That will offer another business opportunity for personal licence holders. Somebody who is trained and trusted and has a licence could run occasional events. The solution is available if we look deeply enough.

Councillor MacIntyre: To run occasional events, somebody who is responsible and is seen to be responsible must be involved. I am sorry—I cannot see the name-plate of the member to whom I want to refer.

Bruce Crawford: My name is Bruce Crawford. I will turn my name-plate towards you so that I can become world renowned.

Councillor MacIntyre: I could not see the word “Crawford”—I thought that it said “Robert”.

Bruce Crawford made a point about the future cost and expense of running events with occasional licences to the standard that is expected. If voluntary organisations in rural areas regularly run events in competition with bars, that will affect the economics of operating at a higher standard, which we must take into account. In rural areas where bars are small, they may survive because of their Friday and Saturday nights. If a voluntary organisation competed with them every Friday and Saturday night, that would cause concern.

The Convener: Does Bruce Crawford want to pursue his original question?

Bruce Crawford: Yes. What are the gentlemen’s views on how the licensing standards officers might be best managed? Should enforcement by them be under a board’s control and direction or should they operate separately as council officers but still report to a board? Another view that has been floated—I would like to know whether it has much credence—is that the police might employ LSOs, who would still report to licensing boards. A plethora of arrangements could be brought to bear on how best to employ LSOs. What are your feelings about what the LSOs’ main role should be in comparison with what the police do?

Councillor Attridge: 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.

Robert Millar: Our submission highlighted concerns about the lack of input to a board under the new arrangements. I am aware that the position varies across the country, but the Edinburgh board has the benefit of input from the fire and police services and from several council officers, including those in food hygiene and environmental services.

The new intention is that a police report may be given but, failing that, only licensing standards officers will have input. The board envisages them as council officers who will appear before the board with reports on the suitability of premises or with complaints under the review system. We did not intend to make representations on that; we merely wanted to throw up a word of caution that, in effect, licensing standards officers will be the only reporting body.

For example, a problem that often arises in Edinburgh concerns planning for premises. At present, a licence is sought in a provisional grant form with a planning certificate and the board is not told the conditions of planning. Later, when the premises are apparently ready and seek finality from the board, the planning department informs us that issues such as landscaping and car parking might not be finalised. The argument is always that the board has no interest at that point and must finalise the licence to allow the sale of liquor, even though the full extent of the planning permission has not been complied with.

There is no provision to tackle that issue in the new proposals, presumably on the basis that there are other remedies—the enforcement regimes for planning, fire safety and so on. However, the proposals may not lead to the most joined-up form of working, because the board will have to finalise licences when there is a considerable amount of work still to be done.

Bruce Crawford: Do the gentlemen from Argyll and Bute want to respond?

Councillor MacIntyre: My view is similar. We had a vision that the LSOs would be attached to the council, simply because of the area that we cover. The workload for the LSOs would be considerable, given what they would have to do and where they would have to go. We have about 640 licensed premises in Argyll and Bute.
Councillor Kelly: We must remember the spread of Argyll and Bute. The licensing board that I chair covers the area from Helensburgh to Rothesay, away down to Tighnabruaich and nearly up to Inveraray. That is a big area. The other licensing board covers the Oban and mid-Argyll area, which is massive and has a huge number of islands. The job would be a big one and a big responsibility.

Councillor Colville: 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.

Bruce Crawford: I hear what you have all said but you are arguing for a situation in which the individual who will be trying to enforce a board’s policies on the ground and who, no doubt, will be involved in the education process will operate at arm’s length from the board. Can the proper direction and focus be achieved, if, as Robert Millar envisages, LSOs are employed more broadly as council officers? It does not matter whether the officers are employed by the council or the board; the issue is whether they will have the right focus and direction if they operate at arm’s length from the boards. I need more from you to convince me of that—I might be convinced, but you have not got me there yet.

Councillor Attridge: That brings us to the subject of licensing forums. 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. Therefore, in Edinburgh, any licensing standards officer who thought that he was at arm’s length doing exactly what he wanted would be told something different. He would be there to work for the betterment of the city and for health and safety.

Bruce Crawford: Surely he would be there to enforce the board’s policies. There may be a conflict between the city’s agenda on economic development and the requirement on the licensing board to ensure that the licensing system operates effectively in a given area. Tell me if I am wrong, but I just want to test the argument.

Robert Millar: Possibly Edinburgh has been fortunate in not having had a breakdown between the council and the board to date. I am employed by the City of Edinburgh Council but have effectively been seconded to the board. The same could be done with the licensing standards officers if that was what was wanted. I do not think that Edinburgh has envisaged a problem with that. Perhaps that was foolish, but it was felt that, as the council is the body holding the money, the revenue would pass through the board to the council. The council would then continue to pay the necessary number of officers. However, that is a purely administrative arrangement and the system could easily operate in a different way.

Bruce Crawford: If fees are going to be recovered from the licence holder and it is all going to wash its own face, all the board will be is a post office for the money going from one place to another—it will not be accountable for the money that is being spent. We could argue for a long time but—

The Convener: Please do not.

Bruce Crawford: I need a bit of convincing and I do not feel as if I am getting it.

Councillor MacIntyre: I do not think that there is conflict between the councils and the licensing boards. We have to work as one to make sure that the regime operates to the benefit of both. Bruce Crawford alluded to economic development. The licensing boards operate completely differently from the councils and have to make their own decisions based on the legislation that is in front of them. Whether a council has a different economic or social view, we are bound by the legislation and that is how we will operate. I do not mind who pays the LSO, as long as it is not the council. Someone has to pay him, but he must do the right job. There has to be a job description and we have to find out where the money will come from. If it comes from the licensees, that is fair enough, but there will be complaints about it. The job is necessary; we have to have LSOs and we have to fund them.

Mr Davidson: Two general issues have been raised in all the evidence sessions on the bill. One is about over-provision and the other is about the automatic granting of grandfather rights and the
possible opportunity to improve standards. What are the views around the table on those issues?

**Councillor Attridge:** We touch on grandfather rights in one of our submissions. 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. However, if an establishment is putting on bona fide entertainment, it will not have any problems.

**Mr Davidson:** You are saying that you are not wanting to blank out grandfather rights but that there should be some assessment of whether they should be granted on an individual premises basis.

**Councillor Attridge:** Yes.

**Mr Davidson:** Apart from adult entertainment, which you mention in your submission, are there any grounds for giving the board the right not to allow such a licence?

**Councillor Attridge:** Training people to meet very high standards and criteria would be one consideration.

**Councillor Colville:** Earlier, one of the witnesses mentioned the fact that their organisation provides extensive overall training. Out in the real world, there are seven different types of licence and we have granted them all. My worry is that, with only one type of licence, someone who is running a small pub with a capacity of 15 could use grandfather rights to move to a pub with a capacity of 500. The board could consider individual circumstances, but if grandfather rights could be granted automatically, that would make things difficult.

**Mr Davidson:** I presume that, if somebody moved from one premises to another, that would constitute a variation, so the matter would come back to the board.

**Councillor Colville:** Fair enough. As I said, we have to look at each case as it arises. Our concern is about how we cope with the transition period and the effect that that will have on councillors’ ability to do their other work. How much work we will have to do is a grey area. Each case will have to be considered and we might have to let some cases go through on grandfather rights. If we do not do that, it will not be feasible to keep the system going. However, I do not think that there should be automatic grandfather rights.

**Councillor MacIntyre:** David Davidson asked about over-provision. The policy memorandum clearly says that over-provision is the fundamental problem. Although the bill will lead to improvements, which is to be commended, my reading of the situation is that there will be further provision.

It is essential that we provide training and set higher standards, but as well as training our staff we must educate our customers. If we are to meet the desired standards, there must be a degree of self-regulation, because many premises will not be able to achieve what we are looking for.

**The Convener:** Will the introduction of the single premises licence make it more difficult for boards to define over-provision?

**Councillor Attridge:** I do not think so. When we consider an operating plan, we will decide whether there is over-provision of that type of operation. I return to the size of the boards: on a good board, there is good breadth of knowledge and it is possible to ascertain whether there is over-provision in the city. The over-provision of alcohol licences currently makes that difficult.

I prefer an approach that is based on merit, rather than one that imposes a blanket ban. In some parts of the city we want development. For example, companies are moving out to the Gyle from the commercial area in the city centre. What else can we do with the huge banking halls that they leave behind? We cannot let classical buildings rot. Some people do not want such buildings to be turned into licensed premises, but through the operating plans we can work out the different types of licence that we might grant. The bill deals with that quite well.

**The Convener:** That brings us to the end of our questions. I thank the witnesses for their evidence.

I welcome our final panel of witnesses. Dan Russell is clerk to the south Ayrshire licensing board and represents the Society of Local Authority Lawyers and Administrators in Scotland; Fiona Stewart is deputy clerk to the north Aberdeenshire licensing subdivision and also represents SOLAR; Councillor Jim Swan is chair of the bill team at COSLA and is well known to me as a councillor in West Lothian; and Kathy Cameron is the policy manager for COSLA. I offer both sides of the panel the opportunity to make some introductory remarks before we go to questions and answers.

**Dan Russell (Society of Local Authority Lawyers and Administrators in Scotland):** Fiona Stewart and I are representing SOLAR, which is the organisation that represents lawyers and professional administrators in local government. As the convener said, we are clerks to our respective boards.
SOLAR has been making submissions for a number of years to the effect that the Licensing (Scotland) Act 1976 was due for review. We welcome the Licensing (Scotland) Bill and what it seeks to achieve. We are keen that the licensing objectives are in place, we are keen on the retention of local licensing boards and local decision making, and we welcome the requirements for statements of licensing policy. We mention in our submission various points that could be improved upon. We are happy to take questions.

Councillor Jim Swan (Convention of Scottish Local Authorities): We welcome the opportunity to give evidence to the Local Government and Transport Committee. COSLA has been looking into the principles of preventing crime and disorder and promoting public safety. I do not sit on a licensing board; I think that that is why I was picked as the chair of the bill team. We are not experts on the subject. We had to try to reach consensus with the chairs and secretaries of several boards, which covered the north of Scotland to the Borders, and east to west, in the form of Edinburgh and Glasgow. We tried to form a consensus from the views of all those boards to represent the general position of COSLA.

Michael McMahon: We get the impression that most people welcome the bill, but that some concern is being caused by who would have the right to object. The bill proposes, basically, that anyone could object. How difficult would that make life for the licensing boards?

Dan Russell: From the point of view of the clerks, we welcome the provisions in the bill, which reflect what happens under the Civic Government (Scotland) Act 1982. Occasionally, we get a large number of objectors to a specific application, but most objections that we receive under the 1982 act are genuine and require to be heard. We welcome the idea of opening up entirely the list of objectors and allowing any person to object.

Michael McMahon: Does COSLA share that view?

Councillor Swan: 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.

Michael McMahon: What is your view on the police becoming objectors?

Councillor Swan: There are areas in which the police could become involved, but it is for the committee to decide whether the police should be statutory objectors. They can certainly raise issues in other licensing committees.

Michael McMahon: When the bill is passed we will have made the decision, but we want to make the right decision. We are looking for good evidence on why certain groups should or should not be objectors, and anything that you can suggest in that regard would be helpful to us. Does SOLAR have any reservations about broadening the list of objectors as widely as that?

17:30

Dan Russell: Our submission refers to a right of appeal for objectors; we are strongly of the view that there should be such a right. However, that creates a problem in that if the list of people who are entitled to object is opened up entirely, the number of people who may have a right of appeal will inevitably be wider, too. A decision will have to be made on whether to go for a completely open list of people who are entitled to object and give them a right of appeal, or whether to restrict the list and thereby also restrict the right of appeal. I cannot suggest any solution to that problem.

Michael McMahon: Would the boards become overburdened clerically if they were trying to deal with that level of competition between one side and another? That might not be the best way of putting it.

Dan Russell: As I said, we have some experience of objections under the Civic Government (Scotland) Act 1982. Occasionally, an application attracts a large number, perhaps hundreds, of objections. Making the process work in practice in order to hear all those objections is an administrative nightmare, but it can be done. I would hate to think that we were excluding competent, valid objections on liquor licensing.

Michael McMahon: From my experience and as a result of some of the evidence that the committee has received so far, I am concerned about the requirement—or the lack of one—on licensing boards to take cognisance of information that the police have. Although licensing boards can request information from the police, that does not always happen. Should it become a statutory requirement that information be requested from the police before licences are granted?

Dan Russell: I hope that the licensing boards would consult the police on all applications. The police currently have the right to object and to make observations. In my experience, they use that right.

Michael McMahon: They do when it is requested of them, but should it be a statutory requirement that information from the police should accompany all licence applications?
Dan Russell: My view is that the current system works quite well. The police have the right to object and to intervene in the process as they see necessary. They intervene at the appropriate time.

Michael McMahon: My experience tells me otherwise.

Kathy Cameron (Convention of Scottish Local Authorities): There is concern among some clerks that the police will be reduced to saying that Joe Smith has previous convictions or no previous convictions, whereas under the current system the police can provide information that might not relate to a conviction on the part of an applicant but which might still lead the board to consider that the applicant should not get a licence. There is concern among the clerks that such information would no longer be available to the board, because the police would no longer be able to provide it.

Paul Martin: The issue is not only the applicant’s previous convictions, but the applicant’s premises. In some cases—my experience backs up Michael McMahon—communities object to applications, but when members of the community arrive at the meeting of the licensing board they are told that no police report has been received about activities at the premises. Is it not important to have a format that would reassure members of the community that, when they arrive at the board, the police will have reported that so many calls have been made to the premises and that so many incidents have been reported, although they might not have been detected? In that way, the board would have a picture of what is going on around the premises rather than focusing on the individual who is applying for the licence.

Fiona Stewart (Society of Local Authority Lawyers and Administrators in Scotland): I can speak only for my own board area on that point.

Paul Martin: Do you recognise that sometimes you might not hear about what is happening? For example, you might not have heard about issues such as those that Michael McMahon and I have had brought to our attention. Perhaps you do not hear about such issues because people raise them with local elected members or directly with the police. It is possible that you have processed applications when 100 telephone calls have been made to the police in relation to antisocial activities surrounding the premises in question, but no report has been made to the board so you have not heard about it. Is that correct?

Fiona Stewart: I accept that.

Mr Davidson: COSLA’s submission mentions grandfather rights, on which you will have heard comments. Obviously, you are involved with two large associations and are not responding as members of boards. What are your views on how the bill is framed with regard to grandfather rights and on the risks of following the English model, which has been mentioned? Will you say something about the application of the proposals and the fact that everything will have to be dealt with almost overnight?

Councillor Swan: One of the main points that we want to make is that there should be transitional periods. There was general consensus that grandfather rights should not be automatic, but it should be recognised that some establishments would find it difficult to get up to speed with training and standards, for example, especially if we are talking about raising standards in older premises to the level that is outlined in the bill. We do not think that grandfather rights should be automatic, but we recognise that a transitional period might be needed.

Kathy Cameron: Earlier panels have spoken about the need to recognise the impact that grandfather rights might have on progressing the proposed legislation. I reflect on what those witnesses said because there is a link between transitional arrangements and grandfather rights. A significant body of work will be required to try to digest applications that are submitted when seven or eight different types of licence become a single licence. My colleagues have reminded me that single licence applications will be accompanied by operating plans that will allow boards to discuss the types of specialism in those plans. Perhaps that takes us back to the issue of over-provision, which has been raised.

On grandfather rights, we seek clarity from the Executive about how the proposals reflect what is being suggested in England and Wales, whether they are right for Scotland and whether systems are in place to cope if those rights are, or are not, introduced.

Mr Davidson: I have a supplementary question for Councillor Swan. Are you suggesting that a transitional period should be granted to the licensing board to deal with all the issues, or that interim provisional or probationary licences should be granted until the board gets round to having a good look at them, which would give people a chance to update or match training needs, for example?

Councillor Swan: We considered matters with the latter in mind. It is always difficult to achieve wide consensus, but there seemed to be a general opinion that a transitional period would be needed
to allow people to try to reach the necessary standards. I would not want to say much more than that.

The Convener: I note that COSLA’s submission raises concerns about adult entertainment. Do you concur with the City of Edinburgh Council’s view that grandfather rights should not apply to premises that provide adult entertainment?

Councillor Swan: The City of Edinburgh Council was involved in the consensus and I bow to its knowledge. As you know, we do not have such entertainment in the West Lothian Council area. There was concern that adult entertainment should be dealt with under different legislation and people who are present thought that the issue should have been considered at an earlier stage.

The Convener: Do the representatives of SOLAR want to respond to Mr Davidson’s points?

Dan Russell: Yes. 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.

Mr Davidson: What about the workload that the officers and officials will have to deal with on behalf of boards in the beginning, when there is an overnight rush to register?

Dan Russell: Again, the answer is to have a reasonable transition period. There needs to be a period of perhaps a year or more between the bill coming into force and the commencement date so that licence holders can create operating plans and boards can establish and publish their policies.

Bruce Crawford: From what I have heard so far, there is huge consensus throughout Scotland on the measures. Everyone tells us that they support the bill generally, but I guess that everything will be fine and hunky-dory only until the fee demands start dropping through folks’ doors. I do not say that the bill is unnecessary, but I suspect that, when people begin to realise how much some of the measures will cost, there will be a minor revolution out there. People already pay business rates and water rates; the proposed ban on smoking will be a problem for small organisations; disability discrimination issues will become more important; there are fire regulations; and now we will have operating plans and more fees.

The fee mechanism is the nub of the issue. The mechanism that is chosen will determine whether the bill is successful and whether there is a general revolution among the licensed trade. Given that, I need to understand from you folks whether the fee mechanism should be based on turnover, square footage or profit. Should the fees be differential between the different types of operation? Should large organisations that use former banking halls pay in different ways from the wee guys who run local pubs? Those are big questions and there will be problems if we do not resolve the issues.

We will not have the chance to hear from you again, so I would like to understand whether a view is forming in SOLAR or COSLA about how to deal with the fees. If not, will you let us know as soon as you have agreed on a view, although that might take you a while?

Kathy Cameron: 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. We have consulted on that proposal. The suggestion would not necessarily keep fees down significantly, but it would mean that, instead of a one-size-fits-all approach—which has been mentioned—boards would be able to consider local circumstances, determine what fees were required and set the fees accordingly.

Bruce Crawford: Is it your argument that councils’ general funds could be used to support licence costs, or is it that the number of premises in some authorities will allow them to keep costs low?

Kathy Cameron: It could be either.

Bruce Crawford: That is where I have a problem. On the one hand, I hear that all associated costs should be covered by the fees, but, on the other hand, if we are to allow councils to support the licensing system from the general fund, we will—

17:45

Kathy Cameron: I am sorry to interrupt, but we need to bear it in mind that, in the current fee process, councils act as a sort of mailbox or bank account for the money to go through. However, the funds that come in via liquor licensing fees are there to support the licensing staff.
I mentioned in our written evidence that the Scottish Executive performed an exercise to measure the income that is derived from that process. It is safe to say that there were 32 separate responses to that exercise. The councils all come from a different perspective, which is right and proper. One size is not appropriate for all. They all have their own issues in their own areas. The only way to proceed is to have a fee structure that sits within that system but results in full cost recovery. The point was made in our bill team discussions that if boards cannot wash their face with the fees from liquor licensing applications, the burden should not be placed on council tax payers.

**Bruce Crawford:** What does SOLAR think?

**Dan Russell:** SOLAR’s position is no different from COSLA’s. There are different ways of setting fee structures. Various decisions will have to be made in that regard. We favour local flexibility in setting fees and we favour full cost recovery. However, how that can be achieved is a huge problem.

**Bruce Crawford:** That is the million dollar question, but we have to get there somehow and somebody along with the Executive will have to come up with a solution.

If the organisations reach a more focused and agreed view, it would be useful for the committee to hear about it, because we have a fair bit to go.

**Mr Davidson:** I have a quick supplementary for Fiona Stewart. Like me, you come from Aberdeenshire. You have a lot of small, well-scattered premises, so the time that is taken by a licensing standards officer to move around will be different from the time that is taken by an officer in, for example, the city of Aberdeen. In Aberdeenshire, we have different divisional boards. Do you see the right to cost recovery being based on each divisional board area or on the whole council area?

**Bruce Crawford:** Good question.

**Fiona Stewart:** It is a good question. We would have to look at it across the council area, bearing in mind the fact that each board is required to have its own LSO for each division. I think that Aberdeenshire hopes to retain its divisions. The costing has to come from Aberdeenshire as a whole, if the LSOs are to be employed by the council.

**Mr Davidson:** If the council does not just move funds around but instead acts as a banker, will it have to come to a view on the costs that need to be recovered? Will the sub-boards have to agree on how that can be dealt with locally?

**Fiona Stewart:** Given Aberdeenshire Council’s nature, I suspect that that would be the case, and that the council would consult the boards.

**Mr Davidson:** I presume that there is an overlap with the six area committees.

**Fiona Stewart:** Yes, but area committee members would be reflected in the boards anyway, because the majority of area committee members also sit on the boards.

**Bruce Crawford:** Are you saying that Aberdeenshire Council would employ six—

**Fiona Stewart:** No, three. We have six area committees for the council, but we have three licensing divisions.

**Bruce Crawford:** But surely even three would not necessarily employ one officer each. Surely the officers would be employed through the council as one entity, so that they could work flexibly in all areas.

**Fiona Stewart:** Yes.

**Bruce Crawford:** That is fine. Thanks.

**The Convener:** Some people have suggested that defining over-provision will be a problem if all licences are of the same type. You probably heard the City of Edinburgh Council representatives say that it would be possible to do that through premises’ business plans. Do you agree that the over-provision of particular types of licences can be dealt with adequately within the single premises licence, or would you prefer there to be distinctions—perhaps not as many as the current number of licences, but more than the single premises licence that is proposed?

**Kathy Cameron:** Several representations have been made to me on that issue. As I have said, copies of applicants’ operating plans, which will set out in more detail the types of activities that they plan to conduct with their licence, will be submitted with single licence applications. Perhaps that will provide some scope to make an easier determination of over-provision. In sitting here and listening to the discussions, I have been reminded that those operating plans will come in at the same time as the applications; we might therefore go down that route.

Having said that, and notwithstanding the views of the city of Edinburgh licensing board, there may be issues for other large city boards to consider. The point that has been made to me is: how do we compare apples and pears under a one-licence regime? That is an issue for the boards to consider, which is why it is important to have the transitional arrangements in place as soon as possible.
Dan Russell: SOLAR generally supports the city of Edinburgh licensing board’s view on the matter. It will not be easy for boards to determine over-provision and it will be even harder for them to declare their policies on over-provision. That will have to be done through examination of the operating plans, which should give us enough information to determine classes or types of operation and enable us to come to a view on over-provision on that basis, provided that there is some definition of capacity. The word “capacity” appears in the bill; there needs to be clarity about the capacity of premises and how that will be determined.

The Convener: That brings us to the end of questions in the last evidence session of the day. I thank Fiona Stewart, Dan Russell, Jim Swan and Kathy Cameron for their contributions. It has been another useful session.

Meeting closed at 17:52.
About the Scottish Beer and Pub Association (SBPA)

The Scottish Beer and Pub Association was originally formed in 1906. Its members are Scotland’s brewing and large pub companies representing the licensed trade industry in Scotland. The main aim of the Association is to contribute to the economic and social wellbeing of Scotland through employment, investment and training.


Our parent association is the British Beer and Pub Association (BBPA). Our members account for 1,500 of the 5,100 licensed public houses in Scotland.

SBPA and Licensing Reform in Scotland

The SBPA has been closely involved with the process of licensing reform in Scotland since the creation of the Nicholson Committee by the Scottish Executive’s then Justice Minister, Rt Hon Jim Wallace MSP, in May 2001.

Our former Chief Executive, Gordon Millar, served on the Nicholson Committee and was fully supportive of the final unanimous conclusions of the Nicholson Committee, with the exception of two minor issues on which he dissented.

SBPA as an organisation has supported the Nicholson Committee’s recommendations, which we believed offered a consensus for progress on which the industry, including the Scottish Licensed Trade Association (SLTA), licensing boards, the police and health bodies could agree. We agreed with the Nicholson proposals as a package and believe that their widespread support is recognised by the fact the most of the suggestions made by the Nicholson Committee are reflected in the Licensing (Scotland) Bill.

SBPA has also served on the Expert Reference Group (ERG) which was established by the Scottish Executive to advise it on the procedural aspects of the licensing reform process. SBPA has played an active role in the Scottish Executive’s consultations on licensing reform and welcomes the opportunity to continue with that involvement through the Scottish Parliament’s deliberations on the Licensing (Scotland) Bill.

Introduction

SBPA is fully supportive of the intentions and generally of the content of the draft Licensing (Scotland) Bill. Our response restricts itself to only commenting on those areas where we believe our members have concerns about the drafting and/or implementation of the Bill.

We remain supportive and committed to the implementation of the recommendations of the Nicholson Committee, particularly as they relate to: the introduction of premises and personal licences; consolidation of the current seven types of premises licences into one; and the abolition of the current permitted hours approach to licensing of premises, which we believe has clearly outlived its usefulness given that 92% of all public houses and 87% of hotels have regular extensions in their hours.

We welcome and support the Scottish Executive’s comments as stated in the Financial Memorandum accompanying the Bill, at Section 301, that “The Executive recognise that the majority of individuals drink responsibly and want to ensure that social drinking in Scotland can be enjoyed in a safe welcoming environment.”
However, we must take issue with some of the assertions contained in the Memorandum at Section 303 relating to the Scottish Executive’s own research report ‘Alcohol Misuse in Scotland Trends and Costs’ and the statement that “the cost imposed upon the NHS in Scotland at 2001/02 prices was £95.6 million, and the total cost to Scottish society was estimated to be £1.1 billion.”

The report itself says of its own cost estimates that “those occurring outwith the Health service should be treated with caution. Much of these are based on findings from research papers taken from the ‘Alcohol Misuse in Scotland Trends and Costs’ report, rather than any robust statistics.” The NHS costs highlighted in the research paper account for less than 10% of the total costs. On that basis, using the Executive’s own disclaimer, the other 90% plus of costs suggested by the paper are not “robust” and should be treated with “caution.”

As an association, we take very seriously the responsible use of alcohol and its misuse by a small minority of the Scottish public. However we do not believe that the ‘Alcohol Misuse in Scotland Trends and Costs’ report produced by the Scottish Executive gives an accurate position regarding the health costs and indeed benefits of responsible alcohol consumption. It is established medical fact that moderate alcohol drinking, as practised by the vast majority of the population, produces health benefits.

As the Nicholson Committee itself concluded “given that the majority of people in Scotland drink sensibly and responsibly, the licensing system should be as free from restrictions as possible.” We believe that this should inform the drafting of the Licensing (Scotland) Bill.

Issues

“Division” of Licensing Board Areas

“Part 2 – Section 5

(2) A council whose area is not so divided at that time may subsequently make a determination that their area is to be divided into divisions for the purposes of this Act.”

SBPA View: We would be concerned that if too many “divisions” are created by Licensing Boards within their areas then this 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. Given that the thrust of the licensing reform process was to simplify the bureaucracy of the current system it would seem contradictory to leave the door open to create a preponderance of new “divisional” Boards.

Overprovision

“Part 2 - Section 7 Duty to assess overprovision”

SBPA View: We do not support the establishment of a “duty to assess overprovision.” We believe the licensing principles adequately deal with this issue and Board’s discretion should not be restricted, as they must have regard to the needs of their community both from a business and from local residents’ interests. We understand that the National Licensing Forum will examine the definition of overprovision and we would be concerned that Board’s will be obliged to operate a formulaic approach on this issue rather than using their local knowledge.

It should be noted that:

- there are only 14% more licensed public houses now than there were in 1980, which should be compared to an increase of 25% in the number of off licensed premises which now account for 40% of all alcohol sales over that time;
- there are marginally fewer public house licensed premises now than there were in 1998;
much of the turnover of a typical pub is now generated by food sales, which has been a developing position and again restricts the scope for accurately assessing “overprovision” issues around the supply of alcohol which is just one part of the offer of the modern pub.

Current indications from some of the current Licensing Boards are that they are satisfied they do not have an “overprovision” of licensed premises within their Board areas. Our concern if “overprovision assessments” were implemented and new applicants denied licences that this would restrict the scope for investment within the licensed trade, other than by investors spending additional funds “buying out” existing licences which would then restrict their scope for direct investment in premises and improving the customer experience going forward.

Licensing Forums

“Part 2 - Section 10 Local Licensing Forums” and “Schedule 2 Membership
2 (1) A Forum is to consist of such number (being not fewer than 5 and not more than 10) of members as the relevant council may determine.”

SBPA View: We are concerned, given that the Bill already identifies five of the groups that should fill the maximum ten spaces on a Licensing Forum, that there will be little scope for the varying perspectives of different types of licensed trade premises to be represented on the Forum. We would compare the situation as outlined in the Bill with existing practice in the Glasgow Licensing Forum that currently has three dozen or so members drawn from a range of interested parties.

Neighbour Notifications

“Part 3 - Section 20 Notification of application”

SBPA View: We are supportive of the suggestion that the notification of near neighbours in relation to licence applications should be broadened. However, we note from the Bill and the accompanying Financial Memorandum (Section 327) that there is an intention to increase the radius for this notification to 50 metres. We would oppose this change given that it will impose significant additional costs, especially in urban areas, on local Boards that will assume responsibility for administering this notification system, for marginal benefit in terms of further informing local communities of any application.

Objections by “Any Person”

“Part 4 - Section 21 Objections and representations
Where a premises licence application is made to a Licensing Board, any person may, by notice in writing to the Licensing Board”

“Part 4 - Section 34 Application for review of premises licence
Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.

“Part 4 - Section 55 Objections and representations
Where an occasional licence application is made to a Licensing Board, any person may by notice in writing to the Licensing Board”

SBPA View: 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.

Overprovision and the Smoking Ban

“Section 22 Determination of premises licence application

(d) that, having regard to the number and capacity of—
licensed premises, or
licensed premises of the same or similar description as the subject premises, in the locality in which the subject premises are situated, the Board considers that, if the application were to be granted, there would, as a result, be overprovision of licensed premises, or licensed premises of that description, in the locality.”

SBPA View: The Scottish Parliament is currently considering the Smoking, Health and Social Care (Scotland) Bill which, if passed, will introduce a smoking ban in enclosed public spaces in Scotland. It is anticipated that part of the response from the industry will be the creation of external “smoking areas.” If a Board assesses that there is “overprovision” within a particular area then it will be unable to grant provision for new additional floorspace, including external areas, which would be equivalent to an increase in the size of the premises. This risks putting licensees, who could be impacted by the introduction of a smoking ban in enclosed public spaces, out of business and should be viewed as a fundamental contradiction between the Licensing and Smoking, Health and Social Care (Scotland) Bills which needs to be addressed.

Additional National Conditions for “Late Opening” Premises

“The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of premises licences.”

Without prejudice to subsection (3), where a Licensing Board grants a premises licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1)) as they consider necessary or expedient for the purposes of any of the licensing objectives.”

SBPA View: It is clear from the Policy Memorandum (Section 86) that the Executive are proposing that Licensing Boards would have a range of additional national standard licence conditions that they could apply to premises that were classed as “late opening.” SBPA did not support this view in the Expert Reference Group and view these additional conditions as unnecessary. Given that part of the thrust of the legislation is the abolition of permitted hours it would seem contradictory to then impose additional conditions on a licence simply because of an arbitrarily set “late hour” of midnight as outlined in the Bill. Many pubs already operate beyond this hour without these conditions and we believe that giving Boards the discretion to apply these additional conditions will simply add costs to running a premises without good reason.

Variations

“Part 3 - Section 27 Application to vary premises licence

(6) In this Act, “minor variation” means—
any variation reflecting any alteration or proposed alteration of the internal layout of the premises, if the alteration does not result in any significant change in the capacity of the premises”
SBPA View: We have a concern that retailers may find themselves having to apply for a major variation to their licence, including having to undertake the public notification processes, if they undertake relatively minor changes to their premises, for example adding a window seat to a bar or removing bar dividers within a premises. We do not know how the Executive would define “significant” as outlined in this section.

Transitional Arrangements

“Part 9 – Section 136 Orders and regulations”

“Part 3 - Section 48 Certificates as to planning, building standards and food hygiene”

SBPA View: It is clear that in moving from the current licensing regime under the 1976 Licensing (Scotland) Act to the new regime that a process has to be agreed for this to happen as timeously and with as little upheaval as possible consistent with the new licensing structure.

In England and Wales, the Government has granted the licensed trade so called “grandfather rights”. This is a provision exempting persons or other entities already engaged in an activity from rules or legislation affecting that activity. The licensed trade in Scotland requires certainty to secure current and future investment jobs and prosperity.

We would therefore propose that the Scottish Parliament accept that established businesses which enjoy the benefits of a liquor licence and hours in terms of the Licensing (Scotland) Act 1976 should have the presumption of being entitled to a premises licence with existing hours and be excluded from having to provide Section 48 certification on the basis that such a presumption may be rebutted if it can be demonstrated by an objector that the operation of any such business materially contradicts the Licensing objectives.

If an objector can demonstrate that the operation of any such business materially contradicts the Licensing Objectives then a premises licence for an established businesses should only be refused if the draft operating plan for such business cannot reasonably be amended to resolve such contradictions.

We also believe that the transition from the current regime to the new one should be completed within as short a timescale as is possible consistent with good administration. Given that the process of licensing reform began in Scotland in May 2001 and that it could be late 2007 before any Licensing (Scotland) Act is enacted we believe it would be poor administration to have, for example, a further three year transition period which could mean that licensing reform would have taken the best part of a decade to complete.

Occasional Extensions

“Part 4 - Section 53 Occasional licence”

SBPA View: It has been suggested by the Scottish Executive that the provisions on Occasional Licensing as outlined in the current draft bill can be readily applied to the operation of existing licensed premises. The provision on “Occasional Extensions” (which relate to already licensed premises) are covered separately in the Licensing (Scotland) Act 1976. 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.

Training

“Part 6 - Section 82 Power to prescribe licensing qualifications”
SBPA View: Many of our members already undertake accredited in-house training programmes and training is viewed as an essential component in improving their customers’ experience. We would ask that any statement of requisite qualifications for bar staff or managers recognises this and that these should not be unfairly excluded from the training qualifications stipulated in regulations. We also believe that the list should not be too prescriptive given that this will again restrict the training options for companies and drive up the unavoidable costs of training.

It is also important for the prescribed qualifications to reflect the fact that during the initial transitional period when individuals are applying for personal licences they may not have had the opportunity of obtaining any new qualifications stipulated under any legislation.

Appeals

“Part 9 – Section 122 Appeals
(4) An appeal against a decision of a Licensing Board to suspend a premises licence may, if—
the decision has immediate effect, and
the ground of appeal is that specified in subsection (5)(b),
be made by summary application to the sheriff of the appropriate sheriffdom.”

SBPA View: The legislation makes clear that the suspension of a licence will come into immediate effect (unlike the current system where the licensee has the right to appeal the decision prior to the sanction being implemented.) If a premises has its licence suspended and as a consequence has to cease trading and an appeal against the decision cannot be held quickly there is a danger that the trading position of the business in question will be so irrevocably damaged as to make it impossible to start trading again successfully if their appeal is subsequently upheld. This makes it essential that reassurances are given and practice established that a court hearing is held within at most a two-week period of a suspension being implemented. The timing of any appeals in this situation is critical.

Fees

“Part 9 - Section 127 Fees
The Scottish Ministers may by regulations make provision for the charging of fees by Licensing Boards—
in respect of applications under this Act, and
otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under this Act.”

SBPA View: We are concerned at the current lack of detail on the proposed fee structure for the new licensing system. The industry recognises that there will be an increase in fees overall given the expanded scope of the Licensing Standards Officers and that “larger” premises will be asked to pay proportionately more. However, this is already the case with larger premises paying more in business rates with this figure directly related to their turnover.

It should also be noted that although many premises in Scotland are part of a larger retail pub chain, many of these premises are leased or independently managed. We would not wish the new Licensing Boards to “goldplate” their new licensing functions with the licensed trade picking up the costs. We would hope that the Scottish Executive would be in a position to provide the final detail of how the new fee structure will work prior to the Bill being passed by the Scottish Parliament, so that this can be subjected to further scrutiny. Indications from England and Wales are that the new fee structure has increased costs to the trade by a factor of four and this will constitute a major cost to the industry going forward. Indeed, it may be that the Scottish Executive wishes to consider transitional support for the new Boards in order to offset some of the costs to the industry.
Irresponsible drinks promotions

“Schedule 3 - Irresponsible drinks promotions”

SBPA View: We support action to tackle “irresponsible promotions,” but we would suggest that the wording in the Bill is too prescriptive given that promotional activity is a legitimate tool for promoting new products, as distinct from selling existing products more cheaply. We are also concerned that the Scottish Executive are taking powers to apply restrictions to the off licensed sector but have given no indications at the moment that they will use them.

There is already industry best practice on the conduct of “responsible promotions” which has been previously endorsed by the Scottish Executive, and we would suggest that there should some provision which would allow these limited promotions in relation to new products to continue.

Anecdotal evidence from our members suggests that there is an increasing trend, particularly amongst younger drinkers, of consuming alcohol purchased from the off sales sector at home, and then coming out for an evening to frequent on sales premises, passing the consequent problems of “binge drinking” onto the on trade. In the past, there has been a presupposition that the on and off trade are different and separate entities. This is no longer the case. Nowadays consumers make a choice between the two and are therefore using the same market, for example, by taking bottles of wine purchased from an off sales premises to a restaurant where they can consume the wine on payment of a corkage charge.

We believe that any restrictions on the on trade as regards promotions should apply equally to the off trade, otherwise it risks simply displace the problem of “binge drinking” to other environments, most notably the home.

Young People

SBPA View: We note the Executive’s intention in the Policy Memorandum to the Bill (Section 138) of “requiring licensees offering an on-sales service to think actively and seriously about whether their premises are suitable for children by choosing whether to “opt in” to access by children.” In our earlier submissions to the Nicholson Committee and other Executive consultations 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.

SUBMISSION FROM ARGYLL AND BUTE LICENSING BOARD

BUTE, COWAL AND LOMOND DIVISIONAL LICENSING BOARD

MID-ARGYLL, KINTYRE AND ISLAY DIVISIONAL LICENSING BOARD

The following are some brief comments from the two Boards that cover the Argyll and Bute area. We have highlighted only certain aspects of the Licensing (Scotland) Bill which raise issues/concerns for us.

Occasional Licences

It is noted that the Bill proposes to increase the number of licences that may be granted in a year to a voluntary body. We have seen the number of Occasional Licences increase considerably over the years and the concern here is that there is no requirement for some level of training to be undertaken by the appropriate members of the voluntary organisation. It is appreciated that the nature of these organisations is such that the personnel can change on a regular basis but if they are to be permitted to apply for up to 12 Occasional Licences during the course of a year then our
feeling is that there should be some form of training undertaken. These events attract people of all ages and in some areas a considerable number of young people. Concern has also been expressed to us by our local Police about the amount of alcohol being consumed at these events.

Composition of Boards

Our concern here is that we feel a quorum of three is insufficient for decisions to be made.

Local Licensing Forums

As in Argyll and Bute, where the local authority area is split into licensing divisions, would it not be preferable to have a forum for each division?

Membership of Forum – This is to include “persons having functions relating to health, education or social work”. Should this not be extended to include those having functions relating to Environmental Health and possibly Planning. How are these forums to be financed?

We feel that it is extremely important that local authorities can continue to hold licences and we welcome the fact that the Bill continues to allow this.

Training

The mandatory training requirement for permanent members of staff is very much welcomed. We are concerned, however, that casual staff will not be required to undertake any form of training. There are considerable numbers of casual staff employed, particularly during the peak holiday periods and we think it would be desirable that they are required to undergo a level of training albeit not to the same extent as permanent members of staff. Perhaps the training could be given by the personal licence holder.

Irresponsible Promotions

It is noted that it is not intended to extend the mandatory licence conditions in relation to irresponsible promotions to off-sales premises. From our experience, the licensed grocer/off-sales premise is the outlet where many young people acquire alcohol and many run promotions of different types.

It is noted that licence holders will be required to maintain their price list for a minimum of 48 hours. Is this sufficient? Will the larger scale premises not be tempted to run a “happy weekend”?

Transitional Arrangements

Details of these are going to be crucial and it is noted that there will be consultation on these in due course. What will be the position of existing licence holders?

We are also concerned at the amount of time Councillors will require to devote to licensing, particularly in the first two to three years of its operation. It is envisaged that the time and resources both for Councillors and the local authority staff will be significant and it is essential that adequate resources are made available.

Fees

Why can’t local authorities be left to fix the fees as happens with Civic Government Licensing? This would then allow them to take account of local circumstances. How are the trade going to manage what can only be a substantial increase in fees? Are Liquor Licensing Standards Officers to be financed through the fee structure?
SUBMISSION FROM THE CITY OF EDINBURGH LICENSING BOARD

Licensing (Scotland) Bill

The City of Edinburgh Licensing Board welcomes the majority of the proposals set out in the Bill but wishes to highlight the following concerns:

Licensing Principles

The City of Edinburgh Licensing Board is concerned that the decision to substitute the term “principles” with “objectives” is downgrading a set of principles which it was understood commanded general respect and support following Sheriff Nicholson’s original report. The original report referred to “Guiding Principles and Objectives” but it is significant that the word “principles” came first. Objectives are used in the English legislation and to avoid confusion it is felt that in Scotland the Licensing Principles as originally set out should remain and should not be reclassified as “objectives”.

Size of Boards

The Edinburgh Board has concerns over the intended size of future Licensing Boards. In its response to the White Paper consultation the Board stressed that its original suggestion was that at least 15 members were necessary in a local government area the size of Edinburgh. What this Board would now suggest is that there is no need to lay down a hard and fast rule. The figures of ten and three in the Bill should be treated as a minimum requirement with a maximum figure left to the discretion of local Boards taking into account local circumstances. The Nicholson proposals in this regard developed from concerns and consultation responses that large Boards are unwieldy and inefficient. It is suggested that there are other means of achieving improvements without reducing the size of the Boards and that reduction in size is only one option. Even in the Nicholson report there was a recognition that smaller groups would sit for hearings with a larger group being necessary for proper policy development.

Licensing Forums

The Edinburgh Board takes a similar view with regard to the arrangements for Licensing Forums. The Bill is too prescriptive in its requirements for local licensing forums. In particular, the maximum size of ten does not allow all interested persons to participate and is therefore inevitably excluding from participation certain important elements. This is not consistent with involving the wider public and taking notice of views beyond that of Boards. Similarly the statutory requirement of one annual meeting with the Licensing Board is too little to allow effective partnership working. The Edinburgh Board suggests that detailed arrangements for forums such as size and frequency of meetings should be left to the discretion of the Local Licensing Boards taking into account local circumstances. Furthermore it should be the Boards who appoint the Forum membership and not the Local Authority. If the current proposals become law the forums will be an irrelevance and waste of resources.

Occasional Licences

The Edinburgh Board considers that the proposal, which would allow voluntary organisations up to 56 occasional licences in any twelve month period, is excessive. This is a large increase from current availability and amounts to allowing organisations a weekly event. Such a level of event has potential to become a nuisance and should be addressed through a premises licence. Furthermore the Board is concerned that there is no requirement to train any staff connected with occasions. Even where the licence is an occasional one it is felt that staff engaged in the actual service of alcohol must be trained.

Hours of Operation

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.

Training

The Edinburgh Board would emphasise its opposition to any non-trained staff being involved in the service or sale of alcohol. It appears to the Board that there is no need to be concerned over casual staff employment opportunities in licensed premises. There are a number of other jobs in licensed premises which can be carried out by untrained staff leaving the sale of alcohol to trained staff.

Adult Entertainment

The Edinburgh Board is concerned that adult entertainment is perceived without further enquiry to be suitable entertainment for liquor licensed premises. The Board agrees with views that the licensing of adult entertainment is a matter for local authorities taking local expectations into account and that attempting to lay down national conditions is inappropriate. The Board have noted the recent appointment of a Scottish Executive Working Party on Adult Entertainment, one of whose tasks is to define what Adult Entertainment comprises. It is the view of the Edinburgh Board that it is premature for legislation on this subject. The full extent of linking the sale or service of alcohol with activities, which are akin to personal sexual services, has not been properly explored in research. Some research available suggests that there is a high risk of violence towards participants, which is enhanced by the presence of alcohol. The Board would recommend that it should meantime be a ground of refusal for premises licences that such premises propose any form of adult entertainment of a sexual nature and that this matter be readdressed once the report of the Working Group of Adult Entertainment is available.

Inspections

Boards are to lose the power they currently have to order structural alterations to secure the proper conduct of the business carried on in premises. The Edinburgh Board has concerns that the new system is based on an understanding that once a licence is granted it will last in perpetuity. The role of representatives from the Council departments which issue the section 48 certificates and the Firemaster will be changed in practice although they will have the right to seek a licence review. In the light of these changes the role of the new licensing standards officers will be critical but do the new arrangements best secure public safety?

SUBMISSION FROM SOLAR

SOLAR is the organisation which represents lawyers and other professional administrators in local government. Clerks as the legal advisers to the Licensing Boards, and other licensing officers meet regularly in a licensing forum to discuss developments and emerging problems in licensing law and practice. SOLAR has argued for some time that a Review of the Licensing (Scotland) Act was required and generally supports the proposals in the Licensing (Scotland) Bill in particular;

- the clear statement of Licensing Objectives
- the requirement on each Board to formulate and publish a Statement of Licensing Policy for their area
- the creation of a Local Licensing Forum and the requirement for the Board to interact with the Forum
- the new role for Licensing Standards Officers and the emphasis on maintaining standards and complying with Objectives/Policies
- the relaxing of the procedural burdens on objectors
- the requirements for training of licenceholders and staff and of Board Members.
SOLAR’s position is one of support for this Bill and for what it is trying to achieve. The following points are raised constructively to assist in consideration of the terms of the Bill:-

**Overprovision**

It is accepted that decisions on this issue should be taken by Licensing Boards addressing the local circumstances. However, guidance will be needed on the consultation process envisaged and on how the definition of ‘capacity’ of premises is to be determined.

**Transitional Arrangements**

It is appreciated that Regulations will follow the Bill. However, a tremendous amount of work will require to take place between the passing of the Bill and commencement. Boards will require to prepare their statements of Licensing Policy and procedural arrangements for handling the new applications and licenceholders will require to complete operating plans. Time to implement the new arrangements is essential, as is the freedom for Boards to apply their Licensing Policies in their localities.

**Fees**

It is appreciated that Fees are to be governed by Regulations. However, it is essential that Boards (ie the local authorities who service them) have sufficient resources (from fee income or otherwise) to finance the new arrangements, including the Licensing Standards Officers, and to deliver the Objectives. Section 127 should contain a mandatory requirement that the Ministers make Regulations ensuring full cost recovery.

**Licenceholder’s Suitability**

The assessment of the licenceholder’s suitability has moved away from the ‘fit and proper person’ test to one which seems to rely upon convictions. There is concern that this is too restrictive and will exclude consideration of events which have not progressed to a conviction. Also, what constitutes a conviction? Does it include a fiscal fine? There are concerns that the licenceholder presented to the Board may be a ‘man of straw’ with organised crime in the background. This seems to be no longer relevant to the Board’s deliberations. Efficient administration suggests there has to be a national database covering all Personal Licenceholders.

**Objectors**

Extending the right to object to any person is welcomed. Should the provisions in section 8 (attempting to influence Board members) which apply to applicants be extended to Objectors or, indeed, to any person acting on behalf of an applicant or objector? Also, should Objectors have a right of appeal? It appears to SOLAR that otherwise there will be a Human Rights issue here and this must be addressed.

**Service**

The duty to serve notice of an application and of an objection will now fall to the Board. In the event of an error being made in service, there should be some mechanism for the Board to correct the error without adversely affecting the application and indeed, in the event that the error cannot be rectified, an indemnification for clerks and their staff.

**Training**

The training requirement for Board members is accepted. If the members of a Board were unable to comply with the requirement within 3 months, the Board may have problems with a quorum. Is there a need for provision to replace members in these circumstances?
Irresponsible Promotions

These provisions are welcomed. However, they should be extended to include off-sales premises. Several Boards have in place Codes of Good Practice for off-sales which include provisions on irresponsible promotions.

Boards/Local Licensing Forum

Both these bodies are to have no more than 10 members. This may be too restrictive either in larger city areas or indeed in more rural areas. It would also be helpful to have guidance on the interaction between the two bodies.

Excluded Premises

It is noted that Section 115 excludes premises primarily used as a garage being the subject of a premises licence. This causes concern in rural areas where the garage may also be the only village store. Such stores are routinely licensed under the existing legislation, attracting no adverse comments in relation to their operation. It would be beneficial if, in these circumstances, such garages are permitted to hold a premises licence.

Operating Hours

As the system of occasional extensions has not been included in the bill, there is no mechanism whereby the holder of a premises licence could apply for additional operating hours for a one off function, such as a wedding. It is simply not possible to foresee all events that should be included in the operating plan. The only mechanism of achieving this would be to apply for a variation of the terms of the premises licence, which would not be practical. It would be beneficial if a system of occasional extensions could be retained for such purposes.

Capacity

The provision in the Nicholson Report for a certificate from the Firemaster, inclusive of an occupancy capacity for each premises has been excluded from the bill. It would be beneficial if there was a requirement on an applicant for a premises licence to include a stated occupancy for each part of the premises in the operating plan. The legislation would require to define the formula to be used as there are several currently available. Without a defined capacity, it is extremely difficult to determine whether premises are overcrowded and therefore a danger to public safety.

Appeals

In terms of the bill, appeals will be by stated case to the Sheriff Principal. This is welcomed. However, it should be noted that a stated case takes some time to prepare which may require a great deal of work of there are a high number of appeals. Also of concern is that appeal on suspension of a licence is by way of summary application to the sheriff. The guidance notes attached to the bill indicate that this will speed up the process. This is contrary to the recommendations of the Nicholson report and perpetuates the criticism that the report seeks to address. Additionally, the bill gives a specific power to award expenses, which is also contrary to the spirit of the Nicholson Recommendations.

SOLAR is grateful for the opportunity to give evidence to the Committee and trusts that these comments will assist the Committee’s consideration of the Bill.

SUBMISSION FROM COSLA

Introduction

COSLA welcomes the opportunity to give evidence to the Local Government and Transport committee on the Licensing (Scotland) Bill.
COSLA agrees in principle with the need for the Bill, as the current legislation no longer meets the needs of those both living in Scotland as well as those visiting our country regarding social public drinking. Equally, COSLA recognises and supports the principles behind the Bill of the prevention of crime or disorder, the promotion of public safety, the prevention of public nuisance, the promotion of public health and the protection of children from harm.

It is important, in our view, that the Bill addresses the serious issues of anti social behaviour, under age drinking and problems of binge drinking, and we welcome that the proposals accord with COSLA’s own views on issues of health improvement in Scotland.

In giving this evidence, COSLA recognises that licensing boards are a separate entity from local authorities. COSLA’s interest in the Bill comes from a number of perspectives. First, local authorities act as the de facto employer of licensing board staff, providing accommodation and associated resources to carry out the work of the board. From a community planning perspective, local authorities have an interest in what economic benefits the licensed trade bring to their area, at the same time recognising the problems that can arise when dealing with development planning issues, as well as the issues of anti social behaviour, as mentioned above. The majority of local authorities, if not all, have set up local alcohol action teams, to work with the licensed trade, licensing boards and other relevant stakeholders to tackle some of the problems associated with underage drinking and other alcohol related problems.

Local authorities therefore have a interest in ensuring that this Bill achieves the aim of providing an appropriate legislative backdrop to the sensible consumption of alcohol in Scotland, while recognising that the changes in Scotland’s cultural outlook, require a simplified, more ‘relaxed’ approach to social public drinking.

The Bill

Turning to the specific proposals in the Bill and associated schedules, COSLA wishes to highlight some key issues, which we believe would merit further consideration by the Committee in recommending changes to the Bill proposals.

Licensing ‘Principles’

In the Nicholson Report, the Sheriff referred to licensing principles, as the backdrop to what he and the committee proposed. It appears that these principles have now been renamed as ‘objectives’ in the Bill, a change that does not seem to have any relevance, other than to align with the terminology used in the Westminster Licensing Bill. COSLA believes it would be useful to retain the term ‘principles’ to serve as a clear distinction from that being proposed in English legislation.

Board membership

COSLA supports concerns that the proposed limits on the board membership is too prescriptive and while accepting the need for parameters, suggests that a sliding scale relevant to the size/density of the board area would be more appropriate.

Licensing Standards Officers (LSOs)

COSLA refers to LSOs later in this paper regarding the fee structure, but wishes to point out that strong concerns have been made known to us that there should be no duty on these officers to undertake additional duties such as enforcement of the proposed Smoking Bill. It was seen as more appropriate that the LSOs could liaise with Environmental Health officers in respect of the smoking issue, in much the same way, as there might be liaison concerning, for example, food safety and hygiene matters.

Recognising that the duties of LSOs will be discussed under secondary legislation and guidance, nonetheless clarity is sought as whether LSOs will have a duty to issue enforcement notices. It would be important for the LSO to ensure proper liaison with the Board clerk, in such circumstances, especially if the licence required to be reviewed.
Over-provision

There is concern that there has been little acceptance by the Minister and the Scottish Executive that one single solution on this issue is not appropriate for all circumstances. COSLA acknowledges that the proposed National Forum will be tasked with providing national guidance on the issue of overprovision, but believes that this should be high level only and not prescriptive and that local knowledge should prevail. If the Scottish Executive trusts local boards, it should be able to trust that this issue will be addressed, as relevant to the board area. There is support for the principle that the National Forum should assist local boards by providing a definition regarding capacity. COSLA would wish to know if this will be obliged to addressed in operating plans and what monitoring processes will be put in place.

Objections and representations

COSLA acknowledges the Minister’s intention to encourage the participation of the general public in the determination of liquor licensing applications. We would seek clarification as to the way in which this is to be managed. Is it, for example, to be necessary to consider objections or representations from outwith the board area? COSLA is aware of the difficulties faced in local authority development planning, when objections are received from people or organisations outwith the authority area. Previous legislation on both liquor and civic government licensing has addressed this in respect of placing restrictions on the ability to object or make representations. COSLA believes it would useful to clarify this issue, otherwise, much time could be wasted on addressing objections at board meetings, leading to delays in the application process. COSLA has also noted that MSPs and MPs often make representations or objections, despite not living in the board area. We suggest that this could be dealt with by including MSPs and MPs on the list of statutory ‘objectors’.

Occasional Licences

COSLA disagrees with the proposed increase for occasional licences and does not see how this would work in terms of ensuring the ability of those operating such licences to be trained in the same way as those managing and working on licensed premises such as pubs and clubs. COSLA proposes that there should either be a reduction in the number of licences offered, for example, one per calendar month, or maintenance of the status quo as defined in current legislation. Otherwise, if the proposals are to be held as acceptable, then occasional licencees should be subject to the same training requirements as other personal licencees.

We have also noted some concerns expressed as the handling of occasional extensions as a minor variation and clarification is sought as to whether this is to be dealt with in the policy statement for each board.

Regarding temporary staff, COSLA believes that these staff should be subject to training from their first day of employment, in the same way as permanent staff. If employed on a part-time basis, then they should undertake non-bar work, until training has been completed. COSLA recognises the impact that this would have, especially in the rural context, but maintains that if the emphasis of the Bill is to ensure properly trained staff, this should be applicable to all staff employed in selling of alcohol.

Personal Licenses

There remains a degree of discomfort among local board chairs that personal licenses can be held for ten years, even with refresher training. The concern is that this risks less control by boards over their activities, notwithstanding the introduction of LSOs.

Control of Order

There is a more general concern here that despite the proposal at Part 7 of the Bill, the level of involvement of the police, especially in terms of personal licences is deemed to be lessened by the Bill proposals. COSLA seeks clarification on this issue. In terms of the specific proposal at Part 7,
the police involvement appears to be wider here and that ensuring fairness and equity would be an issue for the police.

Irresponsible promotions

COSLA has noted that since the continuity pricing model was introduced in Glasgow, promotions have moved towards an emphasis on food sales. In that respect, the pricing model seemed to have had a positive impact, to date. It is not clear if such a model would translate easily to off sales, but currently it is viewed as the best solution to binge drinking. However, we believe it is unfortunate that irresponsible promotions regarding off sales has not be addressed specifically in the Bill.

Exemptions and excluded premises

There is a concern that, in particular for rural areas, petrol stations are regarded more as community facilities in that they often sell foodstuffs, including alcohol, for which they are licensed. This would be seen as a significant loss to rural areas, especially where alternative options such as supermarkets and off-sales premises are not likely to be operating.

Local Licensing Forums

COSLA is concerned that again, ‘one size does not fit all’. The example of the forum already in existence in Glasgow is cited. The forum there encompasses other civic government licensing issues, besides liquor and involves a wide range of community representatives, including community councils. It stressed that the scope for the size of the forums should be determined locally. COSLA seeks clarity as to why the responsibility for setting up the forums is to be given to the local authorities and not the local boards.

‘Grandfather’ rights

COSLA has noted that that if ‘grandfather rights’ are to be introduced, then it would follow that a number of existing licence holders will not have been subject to training. However, the approach in England and Wales has been to provide such rights in proposed legislation. COSLA has also noted concerns that Human Rights challenges might follow from any decision taken not to introduce ‘grandfather rights’, which would become an issue for local boards to manage. COSLA wishes to seek a re-consideration of this issue.

In respect of transitional arrangements, while there is a proposal to discuss this further, there needs to be a clear indication at as early a point as possible as to what action the Minister wants taken on this matter. Boards, especially the city boards, are very conscious of the amount of work involved in managing the new licence structure and believe that the need for decisions on transitional arrangements should be taken as early as possible to allow for the work to be planned. If this is not clarified, the financial burden in managing the process will be significant, especially for the city boards, as well as a number of other large board areas.

Adult entertainment

COSLA finds it difficult to understand why this issue was not considered at an earlier stage. Views have been expressed to COSLA that the matter should be taken out of the Bill altogether and be the subject of separate legislation. Further, that there should be no licence to supply/sell alcohol in such adult entertainment premises.

Neighbour notification

Earlier in this paper, we have commented on matters concerning objections and the wish of the Minister to make objections easier to submit. However, if the neighbourhood notification were to be a duty of the board clerk, then COSLA would be happy to support the proposal, as long as sufficient resources from fees were available to carry out such a duty. Such costs would include IT investment, as well as mapping of the board area.
Fee Structure

COSLA is aware of the Fee Review exercise to be carried out by consultants on behalf of the Scottish Executive. An earlier exercise carried out by the Executive attempted to gather information from local boards on levels of fee income against the number of applications processed annually, as well as overhead costs and an identification of possible costs in employing Licensing Standards officers (LSOs).

It is clear from the earlier exercise that costs are going to be different in each board area and that rather than have a fee structure set by the Scottish Executive, the proposals in the Bill would be better met by boards having the ability to set their own fee structure, within identified and mutually agreed parameters.

In addition, the changes in terms of the simplification of the licence structure have implications for the income stream to support the work of the board clerks and associated staff, even if a retention fee is to be in place for personal licence holders. The underlying concern is that there should be an obligation within the fee structure to ensure full cost recovery, in order that costs are not passed on to council taxpayers. In particular, we would highlight the costs, including that of employing LSOs in rural board areas, with large spatial coverage, but fewer licences.

COSLA seeks reassurance that there will be no potential for licence applicants to seek licences in board areas where the fee structure might be less expensive, and then apply to work in another board area. It has been noted that under the Bill proposals that transfers might have to be the subject of a new application, thus preventing such ‘cherry picking’. However, we would seek assurance that this will be a firm proposal.

In addition, there has been a call among local boards for the establishment of a central register of licence holders, in order to be able to track movement. COSLA has noted that there is no Ministerial will for this to happen, but under current legislation, the 1982 Act provides such a formula, which could be applied to liquor. COSLA would support this call, as it would help boards to monitor licence endorsements, suspensions and withdrawals, particularly if there was a transfer application.

Conclusion

While a number of concerns are highlighted above, COSLA believes there is much to support in the Bill proposals, particularly regarding the no proof, no sale proposals. On this issue, we would caution that only proof that cannot be forged will be of any value in addressing the issues of underage drinking. Finally, we would take this opportunity to reiterate our concerns as to the need for early proposals regarding transitional arrangements, which would need to be both reasonable and practical.

Kathy Cameron
Policy Manager
COSLA
On resuming—

**Licensing (Scotland) Bill: Stage 1**

The Convener: Agenda item 2 is further consideration of the Licensing (Scotland) Bill at stage 1. I welcome to the committee Malcolm Dickson, the deputy chief constable of Lothian and Borders police. He is here today in his capacity as a representative of the Association of Chief Police Officers in Scotland. I give him the opportunity to make introductory remarks on the bill, following which we will move on to a question-and-answer session.

Deputy Chief Constable Malcolm Dickson (Association of Chief Police Officers in Scotland): Thank you. It is a pleasure to be at the committee.

The Association of Chief Police Officers in Scotland has certainly been widely consulted and involved in the build-up to the bill; ACPOS was also involved in the Nicholson committee. Therefore, ACPOS strongly supports a great deal of the bill’s provisions. We particularly support the fact that, for the first time in Scotland, we have a proposed purpose for licensing in the five licensing objectives. That is no small step forward.

It has been understandably difficult for licensing boards over the years, and certainly since 1976-77, to focus on what their function is and what they are trying to achieve because local councillors wear many hats from day to day. Councillors may find themselves playing a strong role in promoting economic development, but the following day they may find themselves on a licensing board. In a country such as Scotland, where tourism, which is a mainstay of the industrial life of the country, relies heavily on the hospitality trade, councillors will clearly be minded much of the time to try to promote the growth of that trade. ACPOS is delighted by the proposal in the Licensing (Scotland) Bill that licensing should have a clear, separate function that concentrates, correctly, on harm reduction.

We welcome various aspects of the bill, including: the retention of licensing boards, which give a local angle; mandatory training—the professionalisation of the licensed trade, if you like; over-provision assessments, which the Scottish Executive has added since the Nicholson committee reported; the discouragement of irresponsible promotions; the protection of young people; and, as I said, the introduction of the five licensing objectives.

However, there are a couple of areas in which we think that care has to be taken during consideration of the bill or during its
implementation, in whatever form it is passed. We accept that, in the 21st century, nationally prescribed permitted hours may no longer be the best way in which to deal with trying to keep some control over the total provision of licensing. We think that, as the Nicholson committee stated, law does not change culture. However, we are slightly concerned, because the drinking culture in Scotland is quite different from that in southern Europe, as I think that everyone acknowledges. I know that the bill does not propose a complete free-for-all, but there is a danger that, over the years, control over the total provision of licensing might be lost. That is our fear. If someone could tell me that the bill will not lead to an inexorable rise in the total provision for public drinking, I would be happy, but I am concerned that there might be such a rise, given the way in which the bill is framed.

My second concern is related to that point, as it is about over-provision. 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.

A further concern that we have expressed since the process began is the diminution of the role of the police service in the person of the chief constable. 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. That is our thinking on the bill, in broad terms.

The Convener: Thank you for those comments and for the paper that you submitted before the meeting, which members have a copy of.

Margaret Smith: I used to be a member of a licensing board and an abiding memory of the board's meetings, apart from the fact that they were very long, is the useful input that we received from police officers, not just about whether applicants were fit and proper persons but about how licensees ran their establishments and how their staff dealt with difficulties on the premises. Given that I have that background, I am receptive to the compelling arguments that are made in the submission from ACPOS for retaining the current level of police involvement and role of chief constables, as well as for including in the bill a definition of "fit and proper person". The submission argues that the current procedures on the role of the police in licensing should be maintained. How could the procedures be improved?

Deputy Chief Constable Dickson: I cannot think of an answer at the moment, but I appreciate your comments. In our written submission, we tried to cover the wider area of how the police are exposed in the first response to a crisis situation in licensed premises. Licensees might not be on their best behaviour when they run premises, but there are matters that licensing boards have a right and perhaps a duty to consider.

The current operation of the Licensing (Scotland) Act 1976 is more or less adequate in enabling us to get views on such matters across to boards. However, we have some difficulty with appeals after a licensing board has decided, for example, to suspend a licence. Even though there might be a prima facie case for suspension, if an appeal is submitted, the licence is reinstated while the appeal waits to be heard. However, if I remember correctly, I believe that that issue is partly covered in the bill, which gives police forces some discretion in closing premises.

Margaret Smith: On the list of relevant offences in the bill, you feel that boards should be left to decide on the relevance of convictions. In fact, you feel that boards should have regard to convictions that are not related simply to running licensed premises.

As far as personal licences are concerned, you feel that the bill's current provisions would lead to self-reporting of court cases and convictions by those who are applying for licences. What would be the result of such an approach?

Deputy Chief Constable Dickson: The list of relevant offences in the bill represents the kind of straitjacket that we want to avoid. That is not because we are spoilsports and always see the worst in everyone; however, as members who have been councillors before will be aware, the police possess certain information about offences and convictions. I should point out that that information can be corroborated to a degree; I am not suggesting that we provide questionable information to licensing boards, and in any case it is always up to the licensing board to question how information has been obtained and whether it is reliable. Police forces throughout Scotland are much better now than they were 20 years ago at assessing the reliability of non-conviction information.

There are occasions when the behaviour of a personal licence holder or the person named on a
premises licence under the terms of the Licensing (Scotland) Act 1976 might not fall into the strict categories of relevant offences that legislators have set out, including—obviously—those that contravene the 1976 act. However, the repetition of an offence might indicate to a licensing board that there is a question mark over a person’s fitness to be a licence holder or that they did not have sufficient respect for the law. Moreover, although they might not have proffered a charge or although the case might not have gone to court, police officers might have dealt with an individual in circumstances that suggest that his or her own use of alcohol might be out of control or might differ from the norm. The boards have a right to know about such factors and to dismiss or accept them as they wish.

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.

The difficulty with introducing the personal licence that the bill proposes is that the licensing board where a person resides when that person first applies for a licence would be responsible for maintaining the record of that licence. Therefore, there would be 32 or more different databases. As soon as a person moved from one area to another, there would be an opportunity for information to be missed, especially in relation to that person thereafter appearing before a court. The bill assumes that a personal licence holder will self-report a conviction to the new licensing board; however, that leaves too much to chance.

Over the past year or so, police consideration of such aspects of the bill has been informed by the outcome of the Bichard inquiry into the tragic murder of two girls in Soham, Cambridgeshire. As you will recall, the inquiry was fairly critical of the way in which police forces exchanged information with one another—especially information on non-court convictions. We are sensitised to that situation albeit that, in Scotland, there is a national database of police intelligence that we hope is a big improvement on the situation in England and Wales. Nevertheless, just as we are not complacent in relation to child protection, we are not complacent in relation to ensuring that licensed premises are run in a proper manner.

Paul Martin: My question is probably more relevant to the off-trade than the on-trade. One specific concern that has been raised with us is that when local communities arrive at a licensing board hearing and are advised that there is no police report, that does not always reflect their local concerns, as they may have made a number of calls in connection with an off-licence. It appears that their perception of antisocial behaviour surrounding premises and their concerns about that are not reflected in a police report. Is there an argument for having a recognised and consistent format at licensing board hearings to ensure that it is not in the gift of the police officers to report such matters but a requirement on the police to report them in a consistent format?

Deputy Chief Constable Dickson: I sympathise with that point of view. We would all—including the association—like to be as consistent as we could be throughout Scotland. However, we are faced with the fact that the eight police forces in Scotland all have different information recording systems: there is no standard format for information capture and provision. There may be room in the bill for, as you suggest, at least a requirement on police forces to bring forward to the licensing board the information that they have gathered about a premises over a given period of time.

It is the practice in Lothian and Borders police for us to try to capture as much information as we can about any incident—to use police speak, for which I apologise—on licensed premises. That sometimes covers incidents that are close enough to the entrance of licensed premises to cover the information that you are talking about. It is sometimes difficult for police forces or boards to differentiate between behaviour outside premises that is related to the premises and behaviour that is there because it is there. Equally, however, I understand that a board might want to know about that and might want to make that decision itself.

The Convener: I have a question about the licensing standards officers. In your submission, you raise a particular concern about the power to enter unlicensed premises. You are concerned about the fact that no warrant is proposed in relation to that power and, importantly, about the potential for LSOs to be subject to violence. Would it be more appropriate for police officers to pursue that role? I ask you to expand on the point.

More broadly, what relationship do you envisage between the LSOs and the police? As well as mediating between licensees and the local community, LSOs will also have an enforcement role. If LSOs are established in local authorities, will they be in the right place or should they be attached to police forces as civilian officers? Do you have other opinions about the proposed operation of the LSOs?

Deputy Chief Constable Dickson: The proposal is partly about the decriminalisation of
licensing offences. On the technicalities of how the running of licensed premises is conducted, I no longer see a need for those premises to be policed by the police—I say that as a police officer who is constantly juggling resources and trying to meet increasing public demands with finite resources.

The convener’s first point was about the power to enter unlicensed premises. I think that most of my colleagues across Scotland would say that we are no longer in the situation of dealing day in, day out with shebeens, illicit stills and drinking clubs. That said, we still need to maintain an awareness of the potential for such premises to exist. It is therefore right for the bill to address the potential for the unlicensed sale of alcohol.

The power that is proposed in the bill for LSOs to enter unlicensed premises without a warrant exceeds the power that police officers have at the moment. Consideration has to be given to safety in that respect. After all, the LSOs, who will be working for licensing boards or local authorities, will be expected to look at the less criminal end of enforcement, monitoring and compliance. We do not expect them to be trained in dealing with disorder or potential violence to the degree that police officers are. That is one reason why we raise the issue.

I turn to the enforcement role and where I see the best place for LSOs. As I said, I tend to think that it is not a bad idea to shift some of the responsibility for enforcement—at least for monitoring and compliance—from police forces to LSOs. LSOs will work for licensing boards or local authorities, partly because of the decriminalisation issue and partly because of the issue of police resource.

The fact of the matter is that, as much as we want to give adequate attention to licensed premises today—here and now in April 2005—other demands on our service mean that we are not doing that to the level that the public has a right to expect. Having a dedicated resource that is at the behest of licensing boards or local authorities seems to be a sensible way of trying to preserve the monitoring and compliance role.

In some ways, having such a dedicated resource might de-escalate the confrontations—that might not be the right word—that arise with some licensees or their staff. It is an unfortunate fact that some members of society do not like the police. I do not know why that is the case, but there are such people. Perhaps the proposal for LSOs will give a more acceptable face to enforcement, monitoring and compliance than the bobby is seen by some to give at the moment.

The association’s view is that, as long as monitoring and compliance are done, we do not have a strong feeling either way on the issue. We are not confident that all police forces across Scotland are providing that monitoring and compliance at the moment.

The Convener: I would like to explore your concerns about warrants to enter and inspect unlicensed premises. I take your point that illicit stills are probably not the concern; I suspect that duty evasion will probably be the biggest concern over the unlicensed trade in alcohol. I understand that organised crime is often behind such trade. Do you fear that if the power in question were introduced, LSOs could potentially put themselves in very dangerous situations?

Deputy Chief Constable Dickson: That potential exists. Through exchanging information with HM Customs and Excise, we know—indeed, I think that everybody now knows—that the movement of alcohol across national borders as well as within countries is problematic, and I would not like to think that LSOs, whom we think of as the friendly but coercive face of the local authority licensing board, would step into such situations.

The Convener: David Davidson has a question. Is it related to what Paul Martin asked about?

Mr Davidson: Yes—it is on the previous point. I would like clarity on a specific matter. I could not find details of the police’s position on personal licences and a way forward—in other words, positive recommendations on what the police authorities or ACPOS would like to see. Do you support personal licence holders holding a Scotland-wide licence, particularly as some chains now have managers who move around? Would you like there to be an accredited standard that people must pass, with no automatic provision? People would have to become accredited and they would then have a national licence. Equally, should there be a central register through which police input—regardless of which force it came from—would be made available to the appropriate licensing board when it came to make a decision? You were not terribly clear about that matter.

Deputy Chief Constable Dickson: I apologise for that. ACPOS’s position on personal licences, on which I am authorised to speak, is that the idea has some attractions, but we understand why the Executive has stopped short of advocating a national database, as that would have big resource implications. However, without a national database, we cannot see any advantage over the current system of personal licences.

You asked what the association would like to see in relation to personal licences. I suppose that a Scotland-wide licence would be a sensible progression. I do not think that such a licence would necessarily be administered centrally, but if it were to apply throughout the country, agreement would be needed between the eight forces and the
licensing boards that they were willing to conform to a standard.

Accreditation is probably dealt with reasonably well in the bill, which covers training for personal licence holders to be qualified. Perhaps there is a question of timing and whether a person must graduate as a personal licence holder before they take up the occupation or whether there is some leeway. For example, a person could be in the trade for some time and then progress to a personal licence.

Mr Davidson: Do you see a comparison between police forces’ access to, for example, information on traffic offences that is recorded on driving licences and the process that we are discussing? A system already exists for any police force to obtain information about a driver at any time.

Deputy Chief Constable Dickson: I am concerned that, as things stand, we would not be able to hold nationally all the information that I mentioned earlier, over and above relevant offences. Most information about specific incidents that do not result in court cases, for example, will be kept locally, probably at the headquarters of each of the eight police forces. Scotland does not have a national police force, so there is no standard way of capturing such information.

Mr Davidson: I accept what you said in response to the convener’s query about court cases. However, would you care to consult your colleagues and write back to the committee offering a view on how information that is not the result of a court action or prosecution could be transferred and the information that you think should be covered? The committee would find that useful.

Deputy Chief Constable Dickson: I can certainly do that.

16:30

Tommy Sheridan: You made some interesting points in response to the convener’s question about the powers of licensing standards officers. Rightly, you are worried about their being given even more authority than existing officers of the law have. I am therefore surprised that there is an omission from your written evidence regarding section 86 of the bill, which describes the powers that are to be conferred on licence holders to remove from premises any person on whom an exclusion order has been imposed. Section 86(4) states that the licence holder may

“(a) remove the person from the premises, and
(b) if necessary for that purpose, use reasonable force.”

I have asked a number of witnesses about the provision, and all have expressed concern about it. I thought that ACPOS would have expressed more concern than anyone. I am concerned by the suggestion that a licence holder could use reasonable force to remove a person from premises, because I do not know what reasonable force is in all circumstances. Do you share my worry about that provision?

Deputy Chief Constable Dickson: I am glad that you have brought that to my attention. Although I have studied the bill, I have not read it line by line and I confess that this is the first time that I have noticed that provision, so there is a shortcoming in my association’s submission to the committee, for which I apologise. The provision has not been brought to my attention by any police force, which surprises me. My response to the question must therefore be personal because I have not been authorised by the association to give its view on the matter.

I share some of your concern that people who are not empowered officers of the law should have a statutory right to use reasonable force. As you say, “reasonable force” is not defined in the bill, although it is defined in other legislation, notably the Police (Scotland) Act 1967. I suppose that the provision is an attempt to be pragmatic and to acknowledge the reality that exists. I am sure that licensees have asked people to leave their premises and have escorted them to the door. However, there is a world of difference between that and using the degree of force that a police officer might use in making an arrest.

Tommy Sheridan: At previous meetings, I have referred to it as the Rambo provision, because there is concern that a power is being conferred that could be used disproportionately, depending on the size of the licence holder and of the person who is breaching the exclusion order. Superintendent George Clelland of Strathclyde Police, who gave evidence to the committee, said that it was a dangerous road to take. Sheriff Principal Nicholson said that the provision would open up a can of worms in relation to potential legal challenges. If a licensee bashes a person over the head to knock them unconscious so that they can remove that person, is that reasonable force, if the person is 6ft 4in tall? I ask the association to consider the issue and to give us a written opinion on it. I hope that your opinion will be similar to those of the people who have already expressed a view, and that the Executive can be persuaded to remove the provision.

The Convener: It would be useful if you could give us written confirmation of the association’s views, once you have liaised with colleagues.

Tommy Sheridan: I would like to put another question to Malcolm Dickson. I have my first parenting class tonight and I need to leave at 5. May I ask the question now?
The Convener: As long as it is not a long speech.

Tommy Sheridan: It will not be. The question relates to the interesting paragraph in your submission entitled “Polluter Pays?” which is short on solutions, as I think David Davidson said. You hint, quite rightly, that the policing of licensed premises, particularly larger ones, usurps much of your resources. As a result, you say that some areas, such as housing schemes in Edinburgh, are “not receiving the level of policing” that they need and deserve. You suggest that we introduce “some mechanism” whereby big licensed premises would pay for the extra attention that they would receive. Yesterday, a housing association in Glasgow received publicity about a scheme through which it would pay for police officers’ time. I am interested to hear what ACPOS says, so can you come back to us with possible solutions? You talk about a mechanism, but what would it be and how would it work?

Deputy Chief Constable Dickson: In England and Wales, the legislation’s approach to licensing hours is similar to that which the bill takes, and the Government is considering such mechanisms, not all of which would address my concerns. For example, the Government is considering linking hot spots of disorder with particular licensed premises. Another approach is to identify localities in which there is a specific need and to designate zones in which charges will be levied; such an approach might tackle the problem in Scotland.

I am worried that we are giving the impression that we are anti-entertainment or that we are opposed to people enjoying themselves, which is certainly not the case. Nor are we opposed to superpubs—as they tend to be called—many of which are well run. However, every time a new big premises opens, policing feels the pinch. I am feeling it particularly in Edinburgh, where there are twice as many licensed premises per head of population as there are in Glasgow, as members know. During the past five years, the traditional city-centre entertainment area has grown tentacles down Leith Walk, along George Street and down the Cowgate and might even extend as far as Holyrood—heaven forfend.

When large premises open, the number of people who enter the city centre for night-time entertainment increases, which has an effect on disorder and violence on the streets. We are not saying that disorder and violence emanate from particular premises; we are saying that an increase in the totality of public drinking has harmful effects. The infrastructure to deal with such effects in Edinburgh is already creaking; we cannot provide the level of policing in housing estates on Monday mornings at 9 am that we should provide, because between 11 pm and 3 am on Fridays and Saturdays we are dealing with the situation in the city centre. The policing pattern for the 24-hour, seven-day week is skewed to the period between 11 pm and 3 am, 4 am or 5 am on Friday, Saturday and sometimes Sunday nights. We must comply with working time regulations and police officers must sometimes have days off, so every time we put an extra officer on duty on a Friday or Saturday night, we must take one or two officers away from daytime policing of other social problems. That is our worry.

You ask for constructive suggestions; we have sought legal opinion and there is no obvious way of dealing with the problem. For example, we cannot simply allow councils to vary business rates, which might be one approach. I suggest that we cannot have a voluntary arrangement that relies on the good nature of individual licensees. Some licensees have approached us and have offered to chip in, which is commendable although it is not a solution. We need some sort of precept: the money from that need not necessarily go straight into police coffers, given that public drinking puts demands on other parts of the public service infrastructure that we have mentioned today, such as public transport, lighting, closed-circuit television and refuse collection.

We need some way of getting the trade to provide for public services. That might mean, for instance, amendment of the bill to allow licensing boards to designate part of an urban centre as placing particular demands on public services, such that a condition of any licence is that the licensee must pay X or Y, according to the size, capacity or throughput of the licensed premises.

The Convener: That idea seems to have parallels with the arrangements for recovering the costs of policing football matches, which are another major business that can sometimes involve disorder and violence. I understand that a significant proportion, if not all, of those costs are recovered by the police. Should we adapt that model to recovery of costs from licensed premises?

Deputy Chief Constable Dickson: To be honest, I would prefer not to adopt the model that is used for sporting events, which has been fraught with difficulty ever since it was introduced and is not easy to enforce. To allow police forces to issue enterprises with bills for extra policing is not what the ethics of the situation demand. I would prefer that the extra need for public service infrastructure be recognised in community planning, perhaps by the community safety side of community planning. Instead of the police force deciding what that extra need is, the police force could simply state how much extra resource it feels it must afford to deal with the problem.
Perhaps the community planning authority—that is, the local authority—or some other body could arrange for that money to be pulled in by precept.

**The Convener:** I will allow brief supplementary questions from Bruce Crawford and Margaret Smith before we return to the questions that are written down.

**Bruce Crawford:** I have two brief questions on resource issues, on which Malcolm Dickson has made some important comments. First, if the City of Edinburgh Council’s licensing board issues more licences and creates more licensed premises per head of population than exist elsewhere, surely the council has a responsibility to acknowledge that in the level of grant-aided expenditure it provides to Lothian and Borders police. Should not the council recognise the added pressure on the police that results from its attempts to create economic development and growth in the city?

Secondly, why would it necessarily be more expensive to have a national database, which could be updated with local input using web-based secure systems, than to have 32 separate local databases created by local authorities? I just do not understand that. Is an issue of scale involved?

**Deputy Chief Constable Dickson:** I will answer your second question first. I am very much in favour of there being a national database. The personal licences will work—if we go down that road—only if we have a national database. However, I was trying to suggest, although perhaps I did not make myself clear, that the information that licensing boards need before someone could get on to such a database is currently held by eight different police forces in eight different ways. We could not simply from one week to the next take that information from those eight different places and put it in one place and expect that the data would, as it were, be able to talk to one another. However, you are absolutely right that the way ahead for licence holders is to have one national database rather than 32 local databases.

In Edinburgh and other towns and cities that have special licensing needs, some of those factors are considered in allocation of grant-aided expenditure, but the licensing issue gets lost in the plethora of factors that are argued over. Perhaps such a special licensing need does not have a high enough profile among those factors, but that would perhaps be the ideal way to consider the matter. As members probably know, Lothian and Borders police force recently argued that Edinburgh is a special case and was granted additional funding by the Scottish Executive. That funding did not take into account Edinburgh’s licensing situation although, as you can imagine, we tried to make that case. The additional funding took into account demands on the police that are unique because Edinburgh is a capital, such as the Scottish Parliament, the Scottish Executive, consuls, VIP visits and so on. The situation remains in Edinburgh. You are right to say that the City of Edinburgh Council could decide to pay more. It has in other cases—for example, on policing of antisocial behaviour.

**Margaret Smith:** Some of my questions have already been touched on. I can testify to the fact that the problem is clearly a drain on community policing around Edinburgh: we have heard about one example. I had cause to call the police a couple of weekends ago; an hour later I got a phone call explaining why they had not arrived. I have not yet seen a policeman on a Saturday night because they have, I think, been dealing with problems outside licensed premises in the Haymarket area.

My other point is about the funding mechanism and the grants that are given to local authorities. The issue should play its part in working out of GAE, because it is not just about a simple figure that indicates how many licensed premises there are in a local authority area. There are several knock-on impacts, of which policing is the most important.

You mentioned that you sought legal advice on the matter. I know that people get very agitated about the possibility of making public any legal advice that they have been given. You sought legal advice on whether there is a simple way to address the problem, for example though varying of business rates, on which you came to the view that it could not be done. Can you expand further on those comments? I guess that one of the problems is that of attributing blame to particular premises. Would there be mileage in giving licensing boards the power to vary fees if there were continual issues about the need to police particular premises, or would the correct response in such a situation be to decide that the premises should no longer have their licence?

**Deputy Chief Constable Dickson:** I have to say that the legal advice is currently draft advice, so we could not found our position on it, but it suggested that variation of business rates does not seem to be a possibility because those rates are set nationally; local boards do not have any leeway to vary them. However, Parliament can change the law.

As I hinted earlier, it would be difficult to vary fees on the basis of the blameworthiness of individual premises, although boards have the power to suspend licences or to attach conditions to licences. Generally speaking, we are talking
about the totality of drinking in a given area rather than how individual licensed premises are run.

I read something that an eminent professor in England had written, which was quoted in Alcohol Focus Scotland’s evidence to the committee. That evidence said that concentration on individual premises rather than on the problem holistically was a bit of a red herring. I sometimes feel that the same is true of the issue that we are considering now, and I have to give the bill credit for moving away from that. The Licensing (Scotland) Act 1976 tended to focus on individual cases, so licensing boards have found themselves in a difficult position ever since because they have had to think about the issue case by case and have never been able to ask what effect a licence would have on a town, city or other wider locality. The bill is moving us away from that, and I like to think that we would not necessarily place blame on individual premises. That said, however, if there is incontrovertible proof that the presence of particular premises that operate a particular type of business in a particular place is adding to public service expense, that may be a justification, but that would be the exception rather than the rule.

Michael McMahon: The bill is designed to address what are perceived to be social problems in respect of the drinking habits of young people and—too often, unfortunately—children. Do you think that the no-proof, no-sale provisions are likely to be as effective as the Executive wants them to be? What other suggestions would you make from your perspective to enhance the no-proof, no-sale provisions or to take them in a different direction?

Deputy Chief Constable Dickson: We certainly support the no-proof, no-sale provisions, and we have in the past encouraged boards and individual licensees and businesses to try to impose controls. It would be of great benefit in addressing the problem across Scotland if there were an acceptable standard. There will always be problems. As members know, people can nowadays apply for a proof-of-age card over the internet without ever having to prove their age. Mr Sheridan’s child might be able to get proof of being aged 18 despite being a long way from that. There will always be certain ways round the controls, but a standardised, acceptable and recognisable proof-of-age scheme is bound to be a big step forward.

Michael McMahon asked whether there are other ways in which we might effect such controls. It is certainly a difficult social problem in every single police area in Scotland and it is the one thing that colleagues bring up time and again. I have to say that there is no easy way to tackle the problem. We have looked, and are still looking, at test-purchase operations—sting operations, if you like—to try to get evidence against off-sales premises that are suspected of selling to under-18s. The general view of most operational police officers is that the problem is licensees selling not to under-age people, but selling by proxy to the under-18s’ slightly older companions. One way or another, young people who want alcohol are going to get it.

One of the things that will help is limiting of low-price offers. Research shows that young people have a finite sum of money that they pool together every Friday or Saturday night, with which they buy as much alcohol as the sum in the kitty can buy. To limit low-price promotions in off-sales premises might be a way in which to address that aspect of the problem.

Michael McMahon: Senior police officers in my area have highlighted their concerns about their inability to police deliveries to homes—what is known in our area as dial-a-drink. Does your organisation have a view on that? Do you have any suggestions as to how officers who find themselves in that difficult situation can deal with the problems of young people acquiring alcohol through that mechanism?

Deputy Chief Constable Dickson: That has an awful lot to do with parental control. Usually, to be able to use dial-a-drink one must have a credit card; often, parents’ credit cards are used. Preventing people from drinking in their homes is a bit like policing domestic violence; it is intrusive, to a degree. Alcohol will always be in people’s homes. Is it an individual problem for parental control or is it something in which the police should interfere? After all, it is not illegal for a child under 18 to drink in his or her parents’ home.

Michael McMahon: The concern that has been expressed to me was about the police’s ability to control the sale of alcohol at source.

Deputy Chief Constable Dickson: I suppose that one might insist on proof of age being used in such circumstances, but enforcing that would be difficult.

Michael McMahon: That is my point. As an organisation, do you have suggestions on how that difficulty could be overcome?

Deputy Chief Constable Dickson: The short answer is no. The situation has grown just over the past two or three years, as you know. We have considered how to license premises from which alcohol is transferred, but the cash transaction often happens at a different place from the goods transaction. Legislating for that will be difficult. It might be that there is some means of proving one’s age to the retailer over the phone or internet, but such a means is beyond me at the moment. That is probably what we want to aim for.
Bruce Crawford: In your evidence, you link the abolition of nationally prescribed permitted hours with over-provision; I want to understand that better. As you know, the bill will allow for development within a licensing board of policies for permitted hours to be included in individual operating plans, and to do away with statutory permitted hours. We have heard evidence—primarily from the Scottish Licensed Trade Association—about its concern that the proposals will allow a more restrictive process to develop. If I have got your drift right, you suggest in your evidence that the bill might allow for a more liberal process as far as licensing is concerned. As politicians, we have to start making judgments on that. Who is right and why?

Deputy Chief Constable Dickson: As I said at the start, my fear is that if we accept a total licence provision in Scotland in any current board area, I cannot foresee provision ever decreasing post-implementation of the bill, other than if individual licensees were to say, “I’ve made a mess of this business, I’m giving up”, and nobody else takes up their licence. The number of licences will creep up year by year.

As we say in our written submission, there have been 3,000 new licences granted in Scotland in the past 20 years. Even that figure belies the fact that the capacity of each licensed premises—particularly in the cities—is increasing. We did not know about pubs that could hold 500 people when I was a boy—not that I went into pubs when I was a boy.

It is difficult to imagine a board saying to a big licensed-trade business such as J D Wetherspoon or Saltire Taverns, “Sorry, we have reached our provision limit. Either you’ll have to reduce your capacity or give up your licence. You can’t have any more pubs; we’re not accepting this multimillion pound development in our town—go and find a site somewhere else.”

It is telling that none of us has a measure of total licensed provision in Scotland. We do not know board by board or in Scotland as a whole the number of permitted hours or premises. If we do not know that now, where will we be in five or 10 years, when we will be asking whether the bill has been a success in allowing us to improve public health and to control crime and disorder?

Deputy Chief Constable Dickson: I certainly favour the bill containing a little more detail because, as you say, it is difficult to get an objective measure. As I have said, the same standard that is applied in Selkirk town centre cannot always be applied in Aberdeen. It might be possible to count up the total number of hours for which a licensed premises is permitted to trade in an average week, multiply that by the capacity of the premises—every premises has a set maximum capacity—and say that is the total licence provision for the premises.

On over-provision, the bill envisages that each licensing board will decide which geographical areas to call localities. For proximity’s sake, let us talk about the Cowgate and the Grassmarket, which form a recognised entertainment strip. The board will decide that the total licence provision for that locality is premises A plus premises B plus premises C plus premises D. That aggregate of licence provision could be measured today and used to say how many licensed hours there are in the Cowgate and the Grassmarket. That represents an objective way of deciding what the provision level must be and whether there is far too much provision or the level of provision is okay. Without such an objective method, how will we know when there is over-provision? In my view, if we ask 32 licensing boards to come up with such a method, we will get 32 different methods.

Dr Jackson: I want to ask about the seven categories of licence. The trade is worried about the change to the system; it suggests that there should be three distinct types of licence. What is your view on that?

Deputy Chief Constable Dickson: To some extent, that is a matter for the licensing boards. Although I can understand the trade’s fears, boards will always want to distinguish between off-sales and on-sales premises. They will also want to distinguish between off-sales in different localities. 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 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.

Dr Jackson: Are you saying that the trade’s suggestion that there should be three categories of licence—on-sales, off-sales and entertainment—is sensible?

Deputy Chief Constable Dickson: That broad division is fairly sensible. Indeed, if such distinctions were not made, I expect that boards would want to make them. It might be helpful for the bill to stipulate those categories, but we want the new system to be a bit more flexible than the
system that exists under the Licensing (Scotland) Act 1976, which confuses operators and police officers.

The Convener: I have a final question as a supplementary to Bruce Crawford's question on permitted hours. At the moment, many off-licences close at 10 pm and many pubs close at 11 pm or sometimes midnight. Nightclubs tend to stay open until later. If there were to be a blurring of the definitions of permitted hours, meaning that more licensed premises stayed open until 2 am or 3 am, would you foresee greater manpower difficulties for the police? Would it be more difficult to respond to incidents resulting from more people leaving such premises in the early hours of the morning?

Deputy Chief Constable Dickson: If the number of licences increases, the number of permitted hours will inevitably increase. I cannot imagine a licensing board ever saying to a licensee who has never offended, “I’m sorry but we’re going to have to cut back your hours.” There will be a ratchet effect and the number of permitted hours will grow and grow. ACPOS believes that ways of dealing with that growth will have to be very carefully thought through, both by individual boards and by Parliament.

You mentioned the different closing times of off-sales and on-sales. Different areas have seen different effects. In some areas, it is considered beneficial to set the licensed hours for off-sales within the licensed hours for on-sales, because people who have come out of pubs cannot then go to the off-licence on their way home. In other areas—although perhaps not so many—the effects are different. It is right that the bill proposes that each individual board should set the times according to its own policy.

The Convener: In a city centre such as Glasgow’s or Edinburgh’s, there could be many more pubs that want to open until later. If the number of premises that stay open until the early hours increases significantly, the number of people out on the streets in the early hours might increase significantly as well. That could have an impact on policing.

Deputy Chief Constable Dickson: That is absolutely our point. We would not like to see that happen, because of the concomitant increase in the demand on police resources. We can talk all we like about police resources—and we are always grateful for whatever local or central Government gives us—but a steady rise in the number of people in town and city centres, and a steady rise in the length of public drinking times, would require a really substantial increase in policing capability to allow us to control situations and to maintain order as the public would expect us to do.

The Convener: That brings us to the end of our questions. I thank Malcolm Dickson for his evidence. It has been very helpful.

Okay, we move on to our last group of witnesses for today. We have a packed panel of five: representing Alcohol Focus Scotland, we have Jack Law, its chief executive, and Mary Ellmers, its national ServeWise manager; representing the greater Glasgow alcohol action team, we have Jane Hasler, its co-ordinator; we also have Willie Caie, the project manager of Glasgow’s safer city centre initiative; and, representing Moray Council on Addiction, we have Neil Ross, its former chairman. We also expected to have with us today Iain Campbell, its present chairman, but he is unable to attend.

I welcome all three organisations and invite you to make some introductory remarks. Given the broad range of groups on the panel, I encourage each representative to keep their remarks as tight as possible.

Jack Law (Alcohol Focus Scotland): I thank the convener for the opportunity to present evidence to the committee today. Alcohol Focus Scotland has been involved in the licensing process for well over 10 years, during which time we have run training programmes and events. We have also pushed for licensing reform through the Scottish Advisory Committee on Alcohol Misuse. We see the need for good and effective legislation to underpin the intentions behind the plan for action. Our aspiration was always that the legislation would complement the policy intentions that lie behind the plan for action on alcohol problems.

We are very much in favour of the bill—we welcome it. We agree with the present licensing principles and are a bit concerned that they are renamed in the bill as licensing objectives. In some eyes, the new name might be seen to reduce the importance of the original principles. However, the matter is one for debate.

We have some major concerns about the bill as it is presently drafted. For example, at this moment in time, it does not seem likely that the bill will deliver on the licensing principles around public health. Perhaps that is because the focus of the bill is somewhat narrow: instead of tackling the wider issues of excessive or problem drinking, the bill focuses on binge drinking and disorder.

As we set out in our submission, our key concerns are that off-licences will be exempt from the measures to tackle irresponsible promotions; pre-loading and other similar issues; and the sourcing of alcohol for people who have alcohol problems. We are also concerned about the probability of longer licensing hours, in particular in supermarkets and off-licences. We understand
that that suggestion is being considered, particularly south of the border. If it were to be taken on board, we are worried about the gradual spread of longer licensing hours into Scotland.

Another issue of concern is the adequacy of monitoring and evaluation of the effects of the bill at both local and national level. It is important that the legislative opportunity that the bill offers enables people to become informed about what works and what does not work. Any legislation is only as good as its application. A strategic evaluation of the impact of licensing decisions needs to be made on a regular basis. In that way, we will be able to evaluate the effectiveness of the new licensing legislation. The issue is as much about the quality of life in communities as it is about businesses and other commercial considerations.

I will close by saying a little about the local and national forums and how they will fit into the process. We are concerned that there is not much expression of how that will be done, particularly at the local level, where there is an interest in involving local communities and local people in the decisions that are made by licensing boards. In particular, we are concerned about the need to ensure that local people, who are perhaps not as well versed in licensing issues as others are, have the capacity, capability and information to enable them to participate in the processes in which we hope they will be involved.

The Convener: Thank you.

17:15

Jane Hasler (Greater Glasgow Alcohol Action Team): I thank the committee for allowing us to attend committee today and give evidence. The greater Glasgow alcohol action team members and our wider partners welcome the Licensing (Scotland) Bill. We believe that it gives a unique opportunity to ensure that a supportive licensing and legislative framework underpins the work of the action team in tackling alcohol problems in the greater Glasgow area.

We recognise that the bill is only one part of a range of measures that were included in the national plan for action on alcohol problems, many of which alcohol action teams have been charged with addressing locally.

As the committee knows, greater Glasgow is one of the largest urban conurbations in Scotland. The action team has been concerned about the level of alcohol-related harm that is evident in the area. Statistics produced by the national alcohol information resource and locally show that the levels of alcohol-related deaths, hospital admissions, general practitioner consultations, accident and emergency department attendances and crime in the Glasgow area are consistently higher than overall Scottish rates. We know that a significant number of adults, 16 to 24-year-old drinkers and under-age drinkers are exceeding healthy, recommended limits for consumption.

On availability, although between 1996 and 2004 the local authority areas in greater Glasgow had rates of liquor licensing per head that were lower than the Scottish average, in most local authority areas the highest proportion of licences was for off-sales. In 2002, there were 152 applications for new licences in the area, the majority of which were granted.

Willie Caie (Safer City Centre Initiative): I am here in my capacity as chair of the Glasgow city centre alcohol action group. We would like to raise a number of issues today. As the committee is aware, we have submitted a number of written responses, but it is worth my raising some issues again verbally.

Over-provision is a concern for local communities, especially in Glasgow. The issue is complex in urban environments. The night-time economy in cities such as Glasgow is thriving, and there is concern that insufficient transport and other provision exists to deal with the number of people who participate in that economy and are disgorged on to the streets.

In an area as large and diverse as greater Glasgow, we see setting up local licensing forums and their role in involving communities as challenging. We continue to support the presumption against 24-hour opening in the bill and the suggestion that the impact of the legislation on alcohol-related public health issues should be reviewed and monitored. We have strong concerns about the fact that off-sales are not included in measures to ensure responsible sales and promotions. We have specific concerns about the practice of pre-loading, to which the previous witness alluded in his evidence, and people purchasing cheap alcohol from off-sales before they go out to town and city centres at night.

I draw the committee’s attention to some recent, as yet unpublished research that was commissioned by the greater Glasgow alcohol action team. The research, which was undertaken in a sample of Glasgow pubs, evidences the fact that there are other factors that encourage or discourage safer drinking in licensed premises. Those include ambience, noise and heat in premises, the availability of food for clients and the types of client who frequent the premises. The findings may be of interest to the committee when it considers certain sections of the bill. The greater Glasgow alcohol action team would be happy to make the research available to the committee,
once it has been published, so that members may be aware of its findings.

Thank you for giving me an opportunity to speak to the committee.

Neil Ross (Moray Council on Addiction): Thank you for inviting me to attend today’s meeting. I represent Moray Council on Addiction, which is a voluntary organisation and a registered charity. You will be pleased to hear that we are affiliated to Alcohol Focus Scotland and that we associate ourselves entirely with Jack Law’s earlier remarks.

We approve of the bill’s objectives and are pleased that training is being given to all personnel. We are also pleased about the establishment of local licensing forums, although we believe that they should be required to meet licensing boards more than once a year, as the bill requires.

You asked us to comment specifically on irresponsible drinks promotions. As a rural organisation, we have not experienced significant problems with such promotions at licensed premises. In our experience, binge drinking in our area is related to home drinking, and I associate myself with the remarks that were made by earlier speakers; we believe that irresponsible off-sales promotions have a significant impact on binge drinking in our area. We also believe that people tend to consume drink up to a specific monetary value; earlier, Deputy Chief Constable Malcolm Dickson mentioned that younger persons have a limited pot of money and they will spend up to that amount on drink. The problem is not irresponsible promotions in licensed premises but those in off-sales premises.

Paul Martin: I have a question for Jack Law. I read your submission, which is helpful and contains useful background information. The table entitled “International trends in alcohol consumption” shows that in Italy there has been a decrease in consumption of more than 47 per cent. Are you aware of any evidence to explain that trend?

Jack Law: I do not have any evidence to hand other than the information in my submission, but my understanding is that licensing processes in Italy are different from those in Scotland. As I understand it, there is a limit to the number of licences that can be provided. However, there is also an important cultural issue. In the continental culture, which is often mentioned and to which some cities in Scotland seem to aspire, drunkenness is not regarded as an attractive state for people to get into. The power of that cultural influence is pervasive in countries such as Italy and France. There have been changes and the picture is not consistent, but in general the culture and tenor of those countries is such that alcohol is enjoyed as part of a meal or a low-key social occasion and is not something that is used to escape.

Paul Martin: Another point that you raised in your opening statement was on the need to include public health in the bill, and you mention that in your submission as well. I think that everyone would agree with that idea, but it is quite wide and your submission does not give any specifics on how it should be achieved. It is easy to say, “Let’s improve public health,” but what should the Executive have included in the bill to facilitate that?

Jack Law: Many of the points that we have made on the bill are about our aim to improve public health. At the end of the day, that is about trying to change attitudes and introduce elements of social responsibility. The reason why people need a licence to sell alcohol is that alcohol is a drug and if people consume too much it changes their behaviour. Excessive drinking also has a major impact on people’s health. If we ensure that licensees understand that they have a responsibility to guide people into not drinking excessively, ultimately that will have an impact on public health. That is what underpins our statement about the impact on public health. If that factor is absent, how will the legislation join up with the policy intentions behind the plan for action?

Paul Martin: Finally, what practical measures do you suggest? Would you require every licence holder to have in place a programme to educate people? Would pubs have to display posters to tell people about liver disease? What practical measures would you include in the bill? The Executive has not included health promotion as an issue, but there is no reason why we cannot lodge amendments on that.

Jack Law: Several things could be done. First, we should ensure that irresponsible promotions in off-licences are outlawed. We should tackle the problem head on and make it clear that the legislation on irresponsible promotions applies also to off-licence premises. Furthermore, licensing hours must be contained. After all, people have as much of a right not to drink alcohol as they have to drink it.

We must ensure that licensees are trained and understand their responsibilities. We do not want them to proselytise and give lectures every time people buy a drink, but they should be able to identify instances when people should not be served. After all, there have been very few, if any, prosecutions in Scotland of people who have served drunk customers. It would also be helpful if literature on sensible consumption and the risks
associated with irresponsible consumption were available in outlets.

**The Convener:** It might be appropriate if we were to move to Margaret Smith’s questions on pricing in off-licences.

**Margaret Smith:** Mr Law touched on the critical point that irresponsible drinks promotions affect off-licences. However, people have expressed concern that the bill says, in effect, that such promotions affect only on-licences. Given the argument that people can stock up on alcohol and drink it over a period of time, can effective controls be devised for off-sales premises? Furthermore, will you outline your concerns about the 48-hour rule? Would extending such a provision to off-licences and supermarkets be effective?

**Jack Law:** On your first question, it almost defies logic that concern has been expressed about irresponsible drinks promotions in one element of alcohol sales, but not about such promotions in the other. We need to do clearer research on this matter, but anecdotal evidence from those who deal with people with alcohol problems suggests that their source of alcohol is off-licences. People with such problems do not go to bars. Other investigations have found that young people and under-age drinkers source their alcohol from off-licences. As a result, there is a clear need to address the matter from that perspective.

The difference in the price of alcohol between off-licences and on-licences is staggering. For example, I discovered recently that, in some outlets that shall remain nameless, people can buy one unit of alcohol for as little as a penny. Again, that defies any logic. The price and availability of alcohol are crucial issues in tackling problem drinking.

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 another 48-hour period? That would be no real change at all. The bill must be robust and direct about such matters by, for example, stipulating a minimum price. That would ensure that we would not have so many problems with cheap alcohol.

**Margaret Smith:** You mentioned minimum pricing. I do not have any details, but I believe that such an approach has been trialled in parts of Perthshire and Glasgow. However, questions have been asked about whether the approach is legal or open to challenge.

In your submission, you say that the Westminster Home Affairs Committee was advised by the Office of Fair Trading that prices can be fixed, “as long as prices are fixed by local authorities and not by trade associations or individual pubs”.

Will you expand on that?

**Jack Law:** That is our understanding of the situation. Our submission quotes a Government report; we did not draw that conclusion ourselves. We understood when the Perthshire experiment started that there was strong advice that local authorities could set minimum prices. I think that the basis of the approach is to do with ensuring that local authorities, as public bodies, have some control over pricing, rather than leaving it to commercial interests. There seems to be a clear suggestion that local authorities have the power to set minimum prices, which would have an impact on how people drink.

**Margaret Smith:** Convener, can we get information about the impact of the minimum pricing pilot schemes? Can we also write to the OFT for clarification?

**The Convener:** The report to which Jack Law referred is not a Government report, but a report by the Home Affairs Committee. Is that correct?

**Jack Law:** Yes.

**The Convener:** The clerks can ask the Scottish Parliament information centre to produce a briefing on the report that draws out the OFT’s advice.

Bruce Crawford is interested in the matter, but he was out of the meeting when we started on it and Margaret Smith asked the question that he would have asked. Do you want to ask a supplementary question?

**Bruce Crawford:** This might be a good time to write to the Executive to ask about its position on the legality of price fixing. It would be useful to have an answer on that before the minister gives evidence to the committee, because that would enable us to consider the issue in more depth.

**The Convener:** We can consider doing that later. Do you have a question for the witnesses?

**Bruce Crawford:** I am sure that I missed the discussion about pricing and irresponsible drinks promotions. What changes would the witnesses make to the way in which supermarkets and smaller off-licences sell alcohol, to try to redress the problems in Scotland and reduce the amount of alcohol that finds its way into the hands of young people and people who abuse alcohol at home?

**Jack Law:** A number of changes could be made. First, the most direct action would be to
ensure that licensees and people who sell alcohol understand their responsibilities and how they can discharge them effectively. Training would offer the most effective way of ensuring that that happened. We should agree national standards for licensees and we should monitor compliance. However, we talk to people in the off-licence trade and we know that they face problems in managing sales. I do not want to diminish the impact of those problems.

Secondly, action could be taken in relation to where and how alcohol is displayed and promoted. We all know about the power of sophisticated marketing and positioning. If sophisticated marketing can bring a product to people’s attention, I presume that there could be an equally sophisticated approach to not bringing alcohol to people’s attention or at least to marketing it more responsibly. That might simply involve positioning, or it might involve ensuring that people are aware that products can be placed in a certain area for a purpose, to inform customers and discourage them from being irresponsible.

Finally, we should ensure that the licensing boards are aware of the issues and the ways in which licensees can be irresponsible.

The Convener: Do the other witnesses want to comment?

Jane Hasler: I would like to mention the do us a favour campaign in Glasgow, in which we have worked in partnership with the police. There are prevention projects throughout Glasgow that target off-sales premises, give them legal information and address the issue of agents who purchase alcohol for under-age drinkers. Enforcement and licensing officers are an important element in tackling such things.

Bruce Crawford: Do you support the proposal that everyone who is involved with alcohol sales at the point of sale in off-licences should be a personal licence holder or should be certificated by the local authority or by a recognised provider of training in order to undertake sales?

Jack Law: Our position is clear. Everyone who sells alcohol should be trained and accredited to a certain standard. A licensee who has a major responsibility for premises should be trained to a different level than that to which someone who sells alcohol on behalf of that licensee is trained. People should undoubtedly be trained to an agreed and accredited standard.

Bruce Crawford: How can we get an accredited standard? How would training be provided? What certificate should people be accredited with?

Jack Law: We think that the national licensing forum should be the first body to set standards, which could be recognised by various accreditation bodies—the Scottish Qualifications Authority is the first body that springs to mind in that context, but there will be others. There should be a national standard that is approved and applied throughout the country; that would lead to consistency in licensee training, standards of delivery and understanding.

Bruce Crawford: Would payment for that come from fees?

Jack Law: We pay for our own driving licences. Training must be affordable if we want to make it work, but we believe that the licensee should pay for it.

The Convener: I think that Michael McMahon has a question.

Michael McMahon: My questions on training and on no proof, no sale have been answered.

Mr Davidson: I have a comment that relates to Margaret Smith’s question. The local courts overturned Aberdeen licensing board’s application for a minimum pricing scheme in licensed premises throughout Aberdeen. If we plan to take evidence from outside bodies, we ought to write for clarification of the grounds for the appeal and the court result. Once the courts, rather than trade bodies or the OFT, have taken a view, we must take notice of what is behind that view and the explanations.

The second page of Moray Council on Addiction’s submission mentions “the promotion of responsible drinking through knowledge and education.”

Will you expand on that and talk about specific schemes or proposals that could be applied?

Neil Ross: The issue goes back to what Jack Law said about training and educating licence holders and staff at the point of sale. Promoting responsible drinking is an educational matter. The MCA probably spends around half of its time educating other professionals and other people in the area. I am not talking about educating licence holders, but there is a process through which people are educated on the dangers and on the sensible use of alcohol.

Mr Davidson: You mentioned those who provide licences and other professionals. Are there any schemes for the public, and for young people in education and parents in particular?

Neil Ross: No. The work is with other health professionals.

Jane Hasler: The local authority education departments are involved with the greater Glasgow alcohol action team, and health education on alcohol is constantly reviewed and improved through various schemes. Such
education should be a major component of all school education and of some youth service education. In greater Glasgow, there are seven community-based alcohol prevention projects—many of which involve young people—that work with a range of different groups in communities. One such project in Easterhouse has done groundbreaking work with young people on social norming campaigns. Young people consider the drinking norms in their groups and, depending on the research, the knowledge is used to publicise positive things about the number of people who do not drink and do not get drunk. Such experimental approaches are being evaluated and we hope to roll them out. A range of things is being done in greater Glasgow.

Mr Davidson: Comments were made about the cultural aspect of the use of alcohol with food in Italy and other continental countries. Do you have any thoughts on making licensed premises family friendly as a means of changing the culture? Would that be feasible and can you think of ways in which such an approach could be introduced?

Jane Hasler: In our response to the white paper, we made a number of comments on that. We felt that, as in the bill, it would be good to allow licensed premises to opt in to allowing children entry but that there should be strict standards for the number of hours that children could be permitted in licensed premises, for promotions and for the public health issues about which Jack Law talked, such as drinking behaviour and health messages on drinking. Family-friendly premises should also be no-smoking environments. There is an opportunity to make licensed premises family friendly, but the business of bringing children into them needs to be thought through and monitored carefully. I would make pretty much the same points as those that we made in our response to the white paper.

Jack Law: We must ensure that we understand the effectiveness of alcohol education. Much of the international research on education of young people suggests that it is not effective on its own; it needs to be part of a wider package. Having a licence places a responsibility on the licence holder; part of that responsibility is to ensure that customers can consume alcohol in a safe and friendly environment, which is partly about ensuring child friendliness. We want to encourage environments in which children can participate in the general social experience rather than participate in a drinking experience. That is important, so it is also important to try to ensure that premises are family friendly. That can be achieved through the operating plan that the premises will require if the bill is enacted. If that was used as a way of encouraging licensees to express their intentions to make their premises family friendly, that would be a huge step forward.

If that approach was coupled with good and effective training that imbued licensees and bar staff with a sense of responsibility, that would inevitably spill over into the customer’s experience in licensed premises, which, if it is worked properly, will be positive.

Dr Jackson: Is there any provision, whether it is included in the bill or not, that you have not spoken about but which you think would be effective in lessening alcohol abuse?

Jack Law: There are a few issues, which we mentioned in our submission. One such issue concerns the exemption from training for casual staff who have worked for less than four months. We are not clear whether that means less than four months in total or less than four months in each experience in the trade. In fact, we argue that anyone who serves alcohol should be trained—that is the simple way of dealing with the issue—and there can be different levels of training. Casual staff do not need to receive massive input as long as they are clear about certain principles. That is important.

The second issue concerns the provision of licences to voluntary organisations for occasional licensed events. We are concerned that there seems to be no requirement for training in that context, although the maximum number of days for which such occasional licences can be granted is 56 days a year; that is a lot of days—it is more than a day a week. 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.

The other issue concerns trains and planes. It defies logic that we are beginning to think through and apply rigorous rules to static premises but that we do not seem to want to apply those rules to other places where alcohol is sold, particularly trains. I presume that we have all been on train journeys in which alcohol has featured strongly and caused disruption. There are difficulties with the provision of alcohol in such circumstances and those difficulties need to be tackled.

Jane Hasler: A previous witness spoke about the impact on public services. As we say in our submission, the service infrastructure in the evening and late-night economy is a big concern for us. Although we support the presumption against 24-hour drinking, we do not know what impact that presumption will have on the number of premises in Glasgow that will open later or what the overall impact will be on the city as a whole.
As a result, we would like the policy’s impact on public health issues in urban centres such as Glasgow to be monitored and evaluated over the long term.

**Neil Ross:** Jack Law touched on the advertising and marketing power of the locations in which certain supermarkets display alcohol. It is not beyond licensing boards to include in plans some sort of restriction on the alcohol or to require that, if it is placed on a layout plan, the alcohol does not move from the planned location. In supermarkets now, the alcohol moves from where it started off to the front door for a big promotion and then moves again. That has a big effect on sales.

**The Convener:** That brings us to the end of our questions for this group of witnesses. I thank them very much for their evidence, which has been helpful.

*Meeting closed at 17:47.*
Members support the majority of the proposals in the Bill, including the retention of licensing boards; mandatory training; overprovision assessments; discouragement of irresponsible promotions; the protection of young people and the introduction of the 5 ‘licensing objectives’, which would provide a clear focus and purpose for licensing boards as they are expected to take on greater and more impactive responsibilities in the envisaged new licensing system.

There are, however, some aspects of the Bill that give serious cause for concern in the policing community.

Repeated surveys and research have shown that the majority of disorder and violent crime is related to the consumption of alcohol. Between 1980 and 2003 the number of licensed premises in Scottish towns and cities increased by over 3,000 (18.5%). At the same time the price of alcohol has not increased in line with earnings. The rise in violent crime is the one aspect of criminality that local authorities and police forces across Scotland have found most difficult to check. One of the ways of ensuring that the licensing objectives are pursued would be to legislate for a statutory link between the processes of liquor licensing and community planning.

The Association’s position has always been that the aim of creating a licensing system, with no nationally prescribed permitted hours, is a worthy one but that the Scottish drinking culture would have to change significantly for that aspect of legislation to succeed. Legislation, unfortunately, does not change ingrained culture. As one of the many public services adversely affected by a growing culture of public and private drunkenness, members feel that it would be difficult to introduce an element of the system which it seems would inevitably increase the total volume of public drinking in Scotland, without a concomitant increase in the public service infrastructure expected to deal with that effect.

Licensing Board Overprovision Assessments

In the event of Parliament accepting the principle of abolition of nationally prescribed permitted hours, members strongly support the principle that licensing boards should carry out overprovision assessments and include the results in their policy statements. It is encouraging to note that Section 7 of the Bill would also permit boards to take account of the capacity of premises in future. However, when assessing total licensed provision, members believe that, as part of the mechanism, which should also include factors such as type and size of existing licensed premises and the nature of the locality, the aggregate number of licensed hours across all premises in a locality also requires to be considered. Overprovision must certainly be a relative and not an absolute concept, but equally it has to be objective rather than subjective.

Licensing boards would need fixed responsibility, adequate powers and adequate guidance on this difficult subject to prevent the licensing objectives from being compromised.

Polluter Pays?

In many towns and cities across Scotland, policing deployment across the 24/7 span of operations is almost entirely driven by two or three periods of peak demand on weekend evenings in the urban centres. This means that in towns and cities where the ratio of licenses to population is significantly above the national average, such as Edinburgh, housing areas where more frequent but less demanding social problems occur are not receiving the level of policing at other times of the day that they would otherwise.

The emergence over the past 5 years of very large and busy licensed premises in urban centres has undoubtedly been the main cause of this disproportionate skewing of police resources.

It would be helpful if some mechanism could be established whereby such premises might be required to contribute financially to the public service infrastructure needed when licensed provision exceeds public service capacity.
Diminished Role of the Chief Constable

When there is an outbreak of disorder or violence related to licensed premises the police are well placed to identify poor practice such as overcrowding, understaffing, poor training, staff incivility, general drunkenness etc. It is therefore evident that for reasons of public safety and crime prevention, Chief Constables require to be closely engaged in the liquor licensing process.

This is recognised in current legislation and in practice has had an “enabling” effect, allowing licensing boards and police to cooperate effectively. Police routinely carry out comprehensive vetting checks on applicants for licences. As well as checking criminal records, effort is made to detect undeclared criminal involvement or someone acting as a ‘front’. This may involve:

- verification of the identity of the applicant and any different occupant, as well as the source of funding;
- uncovering ‘silent partners’ not mentioned in the application; and
- ascertaining the identity of directors where the applicant is a company.

The Bill proposes that the role of the Chief Constable in licence applications will be limited to that defined in Section 20 for premises licences and Section 64 in respect of personal licences. This diminishes the role of Chief Constables and may deprive board members of relevant information, which they currently receive. The ability of licensing boards to refuse licences on consideration of relevant material would be weakened, which is clearly contrary to the licensing objectives at the heart of the new system.

It seems unthinkable, especially following the findings of the recent Bichard enquiry relating to intelligence on sex offenders, that new legislation should reduce the ability of licensing boards to obtain relevant information from Chief Constables.

Abandonment of ‘Fit and Proper’

The Nicholson Report stated: “it has been said to us that the ‘fit and proper person’ test is vague and ill defined and offers no guidance as to what considerations may be relevant and significant”. The report then simply suggests that there will be no need for such a ground in future.

The Association has always opposed the replacement of the ‘fit and proper’ test with consideration of only a list of ‘relevant convictions’, whether for applicants themselves or for those whom it appears they are acting. Chief Constables often possess information other than convictions that may be very relevant when considering whether or not people should be entrusted with the operation of licensed premises. Licensing boards operate to a civil standard of proof and they often competently consider evidence that would not be sufficient to secure a criminal conviction as well as information relating to pending criminal cases or indeed information that does not relate to any criminal case. There must, for instance, be a clear mechanism for a Chief Constable to report to a licensing board that an applicant has repeatedly been found drunk, has lied to police officers or has previously displayed an aggressive and confrontational attitude to members of the public.

Tayside Police and Dundee City Licensing Board are about to introduce an agreed minimum standard to define ‘fit and proper person’. This is a commendable step, but in the opposite direction to that advocated by the Bill.

Were the provisions of the Bill enacted in their present form it may be more difficult to prevent undesirable persons from operating licensed premises.

Proposed list of ‘Relevant Offences’

Members have has already expressed opposition to the proposal that there should be a defined list of relevant offences, which prescribes the crimes and offences which can be taken into account when considering whether someone is a fit and proper person.
Members agree that this has the potential to undermine the licensing objectives set out in the Bill. Boards should clearly have regard to offences involving such matters as violence, drugs, indecency, dishonesty or abuse of alcohol and a list could no doubt be drawn up including all of the above and more. However, convictions for repeated offences of any kind, even minor road traffic offences, may demonstrate a lack of responsibility and a serious disregard for the law.

It should therefore be left to boards to decide on the relevance of any convictions before them. If statutory ministerial guidance were to include advice on the relevance of convictions to licensing applications, this should provide adequate discretion to boards.

**Personal Licences**

There is no police objection in principle to the concept of personal licences. However, the Association has always opposed the idea of a personal licence forever remaining under the authority of the original issuing board. This would lead to every licensing board in Scotland holding records of a large number of personal licence holders working in many other board areas. This would weaken ownership of the responsibility and the ability of boards to keep track of personal licence holders working in their areas but registered elsewhere.

The Nicholson Committee recognised that a national system of personal licences would be unworkable without a central database. Sadly this recommendation has not been carried through into the Bill. The Bill lists a variety of proposals for administering personal licences without a central database by utilising a complex system of statutory notifications that would undoubtedly prove very unreliable in practice.

The complex procedure contained in Sections 71 – 74 relating to notification of court cases and convictions is particularly fragile. The entire process is dependent on personal licence holders taking the initiative to self-report and is thus inherently flawed.

The notification and recording procedures proposed are also likely to increase bureaucracy and expense, contradicting the objective of creating a “simpler and more flexible licensing system” narrated in paragraph 4 of the Policy Memorandum accompanying the Bill.

This has prompted a re-examination of the reasoning behind the creation of a system of personal licences. The Nicholson Report does not really explain why personal licences would be necessary or how they would contribute to the objectives of the new legislation.

At present there are effectively only premises licences. An individual selling alcohol holds the licence alone and is solely responsible for the management of the premises. A corporate body such as a brewery selling alcohol can also hold a licence but must name an individual co-holder as day-to-day manager. This ensures that management responsibility is absolutely clear and always lies with a named person. This part of the existing legislation has always worked well and both licensees and co-holders have been able to move around by virtue of a simple transfer procedure. Additionally and critically, all licences issued by a licensing board relate to activities carried out within its area of jurisdiction.

In the absence of a national database the introduction of additional 'personal licences' would appear to hold no advantages over the current system.

**Powers of Licensing Standards Officers**

Members support the appointment of Licensing Standards Officers (LSOs) to monitor and supervise the operation of licensed premises, but there are concerns about some aspects of the proposed LSO system.

Even if an LSO identifies serious misconduct at licensed premises, s/he cannot report the matter directly to the licensing board but must always issue a compliance notice in the first instance. This restriction may lead to a delay in the board taking action, during which time public safety may be compromised.
The main concern is in relation to the power conferred on an LSO under section 15(2) – 15(6) to enter and inspect unlicensed premises when there are reasonable grounds for believing alcohol is being sold there. This section provides an LSO with the power not only to enter commercial premises but also to enter people’s homes and effectively search the entire premises for alcohol, documentary evidence etc. The householder would appear to commit an offence if he or she does not cooperate fully with the LSO.

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.

I trust that the foregoing is of assistance to you.

Chief Constable
(Hon. Secretary)

SUBMISSION FROM ALCOHOL FOCUS SCOTLAND

Licensing (Scotland) Bill

Comments by Jack Law, Chief Executive, Alcohol Focus Scotland

AFS welcomes the introduction of the Bill as we believe it gives an opportunity to better tackle some of the problems of alcohol misuse in Scotland. These problems, which have long been underestimated, are complex, large and growing. We appreciate that any licensing bill by itself can never be a complete solution and welcome the Scottish Executive’s commitment to an integrated policy approach, with this legislation seen as complementary to the Plan for Action on alcohol problems and other key legislation.

Aims and remit of the Bill

We welcome the aims of the Bill as set out in the accompanying Policy Memorandum. These also form a relevant context against which the comments that follow should be viewed. The aims are 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.

The Memorandum further states that four issues underlie the approach taken, namely reducing underage drinking, reducing binge drinking, providing a voice for communities and modernisation. While we agree that these are all important areas, we feel that in focusing on binge drinking, rather than the broader problem of harmful drinking, an opportunity has been lost. Much of this harm, in particular chronic health harm, is not just associated with drinking to get drunk in a short space of time, and the protection of public health requires that the licensing system contributes to reducing this harm.

Is it not the case that the thinking for the Bill has been influenced by the key priorities stated in the Plan for Action on alcohol problems (Scottish Executive 2001)? These are problem drinking by young people and binge drinking. However the Plan also states that these are ‘key indicators’ for measuring progress and cites a third indicator ‘alcohol related deaths, many of which are due to chronic heavy drinking’. Furthermore the Plan is broad in its thinking on alcohol problems defining them as the;
“whole spectrum of harm (actual and potential) to work, relationships, social position, physical and mental health.”

It sets out key action in four broad areas: 1 culture change, 2 prevention and education, 3 provision of services and 4 protection and controls – of which the Nicholson review and the eventual Licensing Bill were seen to be a key part.

In the time since the Plan for Action was published, concerns about the effects of Scotland’s excessive drinking have increased. In addition to the well known links between binge drinking and crime and disorder, excessive drinking has a huge effect on public health. This is now affecting a wide range of age groups from young to old and both men and women. It is simply staggering that deaths from alcohol (not including accidents or crime) have risen from 1 in 100 to 1 in 30 in the last fifteen years (NHS National Services Scotland 2005). The Chief Medical Officer’s recent report (Scottish Executive 2005) clearly outlines the problem.

“This report contains ample evidence of the adverse effects of excess alcohol on Scots as individuals and as a society. There are steeply rising numbers of deaths attributable to alcohol, and a parallel increase in the cases of alcohol-related liver disease. Alcohol is a major factor also in fires, domestic and street violence and road accidents. There are clear associations with poverty and exclusion, with the most deprived being many more times likely to suffer or die from alcohol-related problems. Efforts must continue to focus attention and effort on the problems of excess consumption of alcohol in Scotland”.

It is also worth considering the situation in other countries – surely they are facing similar rises? On the contrary, in the European Union average death rates from chronic liver disease continue to steadily fall. The UK is also out of step with the trend on total consumption of alcohol – ours is steadily rising while in most European countries it is falling.

The above figure relates to England since no directly comparative figure is available for Scotland. However the trend is similar with the patient discharge rate for those with alcoholic liver disease rising 42% between 1997 and 2003 from 45 per 100,000 to 64 per 100,000. (NHS National Services Scotland 2005)
In 2002, the UK was ranked 9th out of 23 EU countries for alcohol consumption per head of population and also 9th in the world. (NHS National Services Scotland, 2005)

Alcohol Focus Scotland concludes that in setting the aims for the Licensing Bill the Scottish Executive has made a critical omission, namely an aim concerned with the improvement of public health. In order to assist in tackling Scotland’s worsening alcohol related health problems and to ensure consistency of policy, we strongly suggest this should be added. This would also provide a meaningful and consistent background to Bill’s stated licensing objectives, one of which is ‘protecting and improving public health’. Without this, this objective sits alone and unsupported. The focus of action within the Bill should also be widened to include action to reduce harmful drinking rather than just binge drinking.

Pricing of Alcohol and Irresponsible Drinks Promotions Schedule 3

One of our main concerns is that these measures have only been applied to ‘on-licence’ premises. While we agree with the Scottish Executive’s concerns regarding the price of alcohol and the need to prevent irresponsible promotions, we do not feel that these measures will be sufficient, and indeed we feel they may create further problems unless they are further tightened and applied to all licensed premises. The consultation on anti-social behaviour, which led to the Daniels Review, made clear the community view of the link between off sales and anti-social behaviour. Furthermore, we are surprised that the Policy Memorandum to the Bill as drafted restricts its focus to issues related to “immediate consumption” and suggest that this requires review.

In recent years there has been an increasing acknowledgement that the patterns of movement and drinking behaviour in our towns and cities at night is complex. We conclude that it is necessary to take a holistic view of this and that in taking a narrower view with licensing legislation this will only tackle part of the problem which may create displacement and other problems elsewhere.

In the recently published Home Affairs Select Committee Anti-Social Behaviour Report (2005) Professor Hobbs of Durham University outlines the problem:

“With the changes in licensing law [Licensing Act 2003], there is a great hope that individual premises must be well run and if they are not we will close them down. Individual licensees—which

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**INTERNATIONAL TRENDS IN ALCOHOL CONSUMPTION**

<table>
<thead>
<tr>
<th></th>
<th>1970</th>
<th>2002</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brazil</td>
<td>0.7</td>
<td>4.2</td>
<td>500</td>
</tr>
<tr>
<td>China</td>
<td>1.03</td>
<td>3.8</td>
<td>170</td>
</tr>
<tr>
<td>Ireland</td>
<td>5.9</td>
<td>10.8</td>
<td>83</td>
</tr>
<tr>
<td>UK</td>
<td>5.3</td>
<td>9.6</td>
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<td>0</td>
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<tr>
<td>Switzerland</td>
<td>10.7</td>
<td>9.0</td>
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<tr>
<td>Italy</td>
<td>13.7</td>
<td>7.4</td>
<td>-47</td>
</tr>
</tbody>
</table>

In 2002, the UK was in the top 10 in the world for per capita alcohol consumption
is the personal licence awarded to those running the premises—will get their licence taken away from them if they serve under-age drinkers or if they run a disorderly house etc. This emphasis on individual premises is a red herring. The problem is in public space. The problem is the numbers who have been drinking in public space."

We have also observed that there is a complex interaction of drinkers moving between different types of licensed premises. Some drinkers are now going to pubs later but beginning their drinking at home or elsewhere, because it is cheaper to buy their alcohol from an off-licence or supermarket. This phenomenon has become known as 'pre-loading,' with some people becoming so much the worse for wear that they are not admitted into city centre pubs and clubs, most of which have stewards on the door on the busy weekend nights. This leaves these people at limbo in a public space where there is more likely to be disorder (than in licensed premises). We know this from the people that we work with including the police, alcohol treatment practitioners and the licensed trade. This phenomenon has also been highlighted in a piece of recently completed research, as yet unpublished, which was undertaken in Glasgow city centre (Forsyth et al unpublished). While we fully support robust action on licensees who sell alcohol to intoxicated patrons, for the above reasons, we believe that this will have a limited effect in reducing harm.

We are very concerned that the Licensing Bill as it is currently drafted will exacerbate the trend for this pattern of drinking so increasing the risks to health and for disorder, instead of decreasing them. In addition we already know that there is a year on year widening of the gap in sales of alcohol bought from on and off-licence premises, with steadily increasing amounts being bought from off-licences.

We are also very concerned that the price of alcohol is too low – particularly in supermarkets and other off-licence settings. "In real terms the price of alcohol is now 54% more affordable than in 1980" (NHS National Services Scotland 2005). This creates an economic environment where there are significant competitive disincentives for responsible licensees, and this acts as a driver for many of the undesirable practices which have been identified.

**Chart 2.1: Index of the affordability of alcohol: United Kingdom, 1980-2003**

We have also spent some time collecting information about the price that alcohol is available at from supermarkets and off-licence outlets. A small selection from this is given below. We have been dismayed to find some cans of beer cost less than cans of cola.

- Somerfield – 3 litres of Ice Dragon cider for £1.40
- Asda – 2 litres of Oakstone dry cider for 69p
We believe that these are examples of the irresponsible sale of alcohol, whether as part of a special promotion, or, more worryingly, as regular pricing. The practice of discounting for multiple purchase has also become increasingly prevalent and we believe that this has a clearly detrimental effect on drinking patterns in the on and off trade setting. The defence that for off-sales this simply leads to individuals storing alcohol for a longer period, and thus has no overall effect on consumption and harm, stretches credibility.

We are concerned that these low prices encourage people to drink more alcohol and some are drinking far too much. Further, the evidence suggests that consumers are far more responsive to the price of beer bought in an off-licence – because here they are paying purely for product, where in pubs and bars they are also paying for the social experience of drinking (Prime Minister’s Strategy Unit 2003).

We are also concerned about the effect of low prices on young people. International literature suggests that children may be more responsive to price changes than older people and that the more frequently young people drink, the more important price appears to be (Prime Minister’s Strategy Unit 2003). In our experience a common scenario is young people buying the maximum amount of alcohol for the money that they have available at that time. So lower prices mean they can buy substantially more.

This is particularly concerning given that premises with an off-licence tend to be children’s preferred place to buy alcohol. Research conducted on behalf of the Nicholson Committee (and quoted in the Policy Memorandum) found that half of the 14 and 15 year olds surveyed in the Edinburgh area said they had purchased alcohol themselves. Of these, the grocery store was the preferred place with 33% of them purchasing alcohol there. (Bradshaw 2003).

This research, along with others such as the SALSUS survey, point to a worrying trend with more children drinking at a younger age and consuming greater quantities of alcohol. Taken in conjunction with the rise in the lad and ladette culture, which now commonly extends beyond the teenage years to people in their 20s and 30s or sometimes older, this means that there is a trend for people’s ‘heavy drinking careers’ to begin earlier and last for longer, before turning to more moderate patterns of consumption. However this is having a massive toll on public health with increasing numbers presenting at younger ages with health problems like alcoholic liver disease – previously uncommon in the under 40s.

In the light of the health epidemic that we are facing, we feel this situation is contrary to the public interest and the only people who gain are large commercial interests. The concern about the price of alcohol is widespread and even many in the licensed trade feel that the price has gone too low and that intervention is required. Alcohol Focus Scotland urges the Scottish Executive to use the available mechanisms to control the downward price spiral.

In the recently published Home Affairs Select Committee Anti-Social Behaviour Report (2005) the issue of minimum pricing was again examined:

“The Office of Fair Trading (OFT) advised us that under the Competition Act 1998, the Secretary of State is empowered to make an order to exclude the application of the Chapter I prohibition from an agreement or category of agreements, where there are “exceptional and compelling reasons of public policy’ for doing so.”

On the matter of promotions they further state:

‘One route to tackling irresponsible promotions is the introduction of minimum pricing policies. We have heard a great deal of confusion on this point: several witnesses told us that local authorities
are currently unable to introduce such policies; however, the Office of Fair Trading has advised that competition law is not necessarily a barrier as long as prices are fixed by local authorities and not by trade associations or individual pubs and clubs. We recommend, if it has not already done so, that the Office of Fair Trading clarifies this point directly to local authorities and that local authorities consider seriously the benefits of such a scheme.

We also have concerns that the mechanism given in the Bill which fixes alcohol prices for 48 hours in on-licence premises may not be effective in preventing excessively low prices. The effect of this provision requires evaluation. We believe that if this leads to deep discounting of alcohol over extended periods of 48 hours or more, this is inconsistent with the Licensing principles and will require review. We believe that measures to be extended to off-licence and supermarket premises, since price promotions there tend to run for several weeks at a time.

**Alcohol Focus Scotland strongly recommends that the Scottish Executive re-examines the evidence on the price, marketing and promotion on alcohol, as part of the consideration of the inappropriate promotion and sale of alcohol, with a view to strengthening the measures taken in the Bill and applying them across all licensed premises.**

### Licensing Hours and 24 hour drinking

Alcohol Focus Scotland reiterates the position that we have stated previously that we are concerned that removal of standard licensing hours will result in longer licensing hours. Though we are aware that the current system already allows flexibility, we are concerned that ending of permitted hours and the removal of the distinction between licence types in practice may be seen as a ‘green light’ to longer hours for all licence types. In our opinion this would lead to an increase in problem drinking.

We are also very concerned that the abolition of the types of premises licence, including the distinction between on and off-licence premises, will allow premises currently operating primarily as an off-licence to open for extended hours – something that is not possible under the current system. Some supermarkets and city centre convenience stores already open for very long hours, sometimes for 24 hours a day. We are concerned that some of these have already signalled their intention to apply to sell alcohol for 24 hours. There have also been reports that JD Wetherspoon is proposing to apply for 24 hour licences for its pubs at railway stations and airports across the UK and that it has put in an application to Leeds City Council for a 24-hour opening licence for a branch at a city railway station. We are very concerned about these developments and the possibility that this may lead to other off-licence premises following suit.

We note clause 60 which states that 24 hour licences are to be granted only in exceptional circumstances. 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.

In all cases, whether 24 hours or not, we feel that extensions in off-licence hours after midnight are likely to result in increased drinking, with regular drinkers increasing their alcohol intake by adding a ‘carry-out’ on top of the often large amount drunk during an evening out. We refer again to our earlier comments about drinkers’ complex patterns of movements during an evening. This raises the prospect of further exchange between on and off-licence premises, creating a new problem of an end of evening ‘top-up’ in addition to early evening ‘pre-loading’.

In addition, practitioners advise that those dealing with an alcohol problem report that the opportunity of being able to use a supermarket at a time when alcohol is not available for sale is a valuable one. The needs of this group require sympathetic consideration.
Alcohol Focus Scotland strongly recommends that national conditions (or some other measure) should be put in place to prevent premises selling alcohol primarily for off the premises consumption from operating after 12 pm at night and that the Bill be amended so that all licensed premises are required to close for a minimum number of hours. We suggest that the maximum trading day be set at 16 hours. We also recommend that there should be adequate evaluation of the effects of the removing standard licensing hours.

Training

Alcohol Focus Scotland believes that all licensed premises have an important part to play in tackling excessive drinking. Research has shown that drinking behaviour is affected by the physical and social environment. It is essential that licensed premises create an environment that contributes to sensible drinking and does not encourage excessive drinking. We believe this can be done through a whole range of factors including the standard set by the premises and the staff, any entertainment provided, the way in which alcohol is marketed and promoted on the premises and the price at which it is sold. An important element is to ensure that licensees and staff are well aware of their legal and social responsibilities.

We welcome the strong stance that the Scottish Executive has taken on training, placing minimum training requirements on licence holders, staff, licensing board members and training providers. We strongly advise that any such training must contain a strong social responsibility component if it is to be effective in creating real change. This should include legal and social responsibilities, preventing problems and how to encourage sensible rather than excessive drinking.

However we are concerned that some of the permitted exceptions to the training requirements may continue existing problems. For instance voluntary organisations can be permitted to gain occasional licences for up to 56 days in a year, yet they are not subject to any training requirement. In some remote parts of Scotland, such as the Highlands and Islands, there are areas where licensed premises are few and such events are common and attract large numbers of people. However such events are frequently run by people with little licensing experience or training and may result in public order or other problems. We think that at least there should be someone present who is subject to licence holder training requirements.

We are also concerned that as detailed in the explanatory notes point 344 ‘Exemptions will be allowed for casual staff who have worked in the trade for less than 4 months.’ We feel this needs more explanation – will this be 4 months in any continuous period, or total experience of 4 months? How will this be monitored to ensure the system is not abused? We are concerned that many licensed premises have part time casual staff and it would be detrimental to the standards being set if short term contracts or other measures were used as a ‘loop-hole’ to avoid training. In any case, we think that all staff should have to undergo some form of basic training on their essential legal and social responsibilities.

Licensing Policy and Licensing Forums Clauses 6,10 & 11 and schedule 2

Alcohol Focus Scotland welcomes the inclusion of the requirement that licensing boards produce and publish policy statements every three years and that this should be done following consultation with the licensing forum. We note that licensing forums have been given a role in keeping under review the operation of the Act and the licensing board’s functions and so also presumably the effects of the board’s policies. However we are concerned that licensing boards themselves have not been required to account for the effect of their policies. Licensing forums may not have the resource or ability to adequately monitor the board’s policy and unless a policy is written with monitoring or evaluation in mind, its effects may be extremely difficult to evaluate at all.

We are concerned about the ability of licensing forums to truly ‘provide a voice for communities’. We think that the minimum number of members currently set at 5 is too small and that the present maximum of 10, which would only provide 2 – 3 places for community representatives, may be insufficient in some areas.

We feel that the required number for forum members should be revised upwards to allow for more community representation – we suggest 10 to 20 members. We also strongly feel that
there should be a fair and transparent process for the selection of licensing forum members.

Other matters

Sensible drinking materials and operating plans

We are disappointed to see that the Nicholson Committee recommendation on sensible drinking materials appears not to have been incorporated anywhere. This was that 'a standard condition might also require that a prescribed minimum amount of material promoting sensible drinking should be displayed in a prominent place in all licensed premises.' (Nicholson Committee 2003).

We feel that the display of sensible drinking materials should be required by a standard condition or should be included in any operating plan template. We also feel that a number of factors known to contribute to sensible drinking, such as the provision of food and good stewarding, should be included in any operating plan criteria, to be applied as relevant. There are also other factors known to be are inhibitors to sensible drinking. These include excess heat, noise and overcrowding and irresponsible marketing practices. We feel it would be helpful if the operating plan required applicants to state what measures they had in place to avoid or control such factors.

National Licensing Forum

We note in that in the Explanatory Notes point 306, that it is stated that ‘the Executive is committed to establishing a new National Licensing Forum’. However we think it is odd and a little concerning that this body which is to take such an important role in bringing national consistency, is not even mentioned on the face of the Bill.

We also strongly feel that there should be evaluation of the effects of the changes brought in by the Licensing Bill against its stated licensing objectives, at both local and national levels. We feel that the National Licensing Forum should be remitted to take a lead role in this at the national level.

Exempt premises

We are disappointed that the Executive did not take the opportunity to bring the service of alcohol on trains and at airports into line with other licensed premises. There are increasing concerns about problems of drunkenness and disorder on trains and on planes. There is plenty of anecdotal evidence of the problems that can arise from people spending long periods drinking in airport bars. We are further concerned that potential for extended licensing hours, even 24 hours – as mentioned earlier at point 3.2 – particularly in or around train stations, will fuel existing problems.

We recommend that the Executive commissions research to gauge the extent of alcohol problems in and around train stations, trains, planes and airports and to suggest possible solutions as appropriate.

Enforcement and Monitoring

We welcome the creation of the new Licensing Standards Officer Posts. We believe that the monitoring and enforcement of licensed premises has long been inadequate and under resourced. A sufficient workforce of capable and well trained officers is essential to the effective operation of an informed and responsive licensing system. However it is still not clear how the roles of the police and the LSOs will link to each other, since in many clauses of the Bill both are enabled to take action. This will require much more clarification if the new role is to function effectively.

References


SUBMISSION FROM GREATER GLASGOW ALCOHOL ACTION TEAM

Background Information on the Greater Glasgow Alcohol Action Team (GGAAT)

- The Team reformed in November 2002 in response to requirements contained in the National Plan for Action on Alcohol Problems, which was published earlier that year. Its membership comprises of the Director of Community Care & Planning, Greater Glasgow NHS Board (Chair) and senior representatives from: the five local authorities within the GGAAT area, local prisons, police, the voluntary sector and other GGNHSB representatives.

- The Team works through, and with, a number of related partnerships including: Local authority based Addiction Planning and Implementation Groups including the one for Glasgow City area, Community Safety partnerships and forums and local drug and alcohol community forums.

- During 2003, the Action Team established the City Centre Alcohol Action Group, which seeks to tackle alcohol related crime and fear of crime in the city centre area.

  The GGAAT Chair is a member of the current Glasgow City Licensing Forum.

- In 2004, the GGAAT was successful in being awarded £50,000 from the Alcohol Education Research Council to be one of three national UK Community Prevention Trial Pilots. The Glasgow bid is focused on reducing alcohol related crime, trauma and disorder in the city centre, focusing on a range of evidence-based approaches and measures including server training, transport improvement, environmental/safety initiatives, media and communication work. The trial will seek to measure the impact of these over a three to five year period. The policy and legislative framework through the Licensing Bill within which this trial is conducted is clearly an important factor.

  The GGAAT consulted widely on the Nicholson Report, the Daniels Report and the Licensing (Scotland) White Paper. Attached at Appendix 1 is a copy of the agreed GGAAT response to the questions posed in the White Paper.

Below are some additional points in relation to the current version of the Bill:

The National Policy Framework – Further Comments

As noted in the GGAAT response to the White Paper consultation, over-provision is an area of concern to local communities/forums. There may be mixed views on this from other partners. The Bill’s requirement for Licensing Boards to make proactive assessment of local provision involving the police, local communities and the trade is welcome. The Policy Memorandum accompanying the Bill notes the complexity of “over-provision” and in urban areas such as Glasgow, with the scale of people using licensed entertainment premises especially over weekends, this is complex to assess. Further guidance from the National Forum may perhaps be required to address issues such as taking into account the types of different premises, the capacity, and the volume of people
coming in and out of areas to use licensed premises, in any assessment of over-provision. In addition, guidance on what would constitute that Boards have demonstrated good consultation with communities would be important so that decisions taken in this matter are transparent to communities.

The GGAAT response to the White Paper highlighted that it is important for local influence and decisions to be exerted by local Licensing Boards, within an overall clear national framework. The proposed National Licensing Forum, which will be important in setting clarity on national issues, appears not to be referenced in the Bill itself.

**Local Licensing Forums – Further Comments**

The GGAAT’s response to the White Paper indicated the need for further guidance on the make up of such forums. A challenge will be how the many and diverse communities of an area such as Glasgow City can/or should be represented on one Forum. Rural areas will also have specific challenges in this respect. More detail is required on the balance of representation between those specified in the current Bill and the Licensing Forums’ role in wide and meaningful engagement on licensing issues/policy.

**Licensing Hours – Further Comments**

The GGAAT response to the White Paper indicated strong support for the presumption against 24-hour opening and that local Boards should determine opening hours according to local needs.

The impact of the policy on alcohol related health, crime and disorder, community safety etc should be evaluated for a reasonable period after the introduction of the legislation. This is especially important if the ability to apply for longer opening hours results in increased numbers of premises opening longer.

The impact of wide spread potential extended later opening, as a result of relaxing the licensing laws on essential local services needs to be considered, for example, policing, transport, refuge collection. Adequate public transport is a key issue in Glasgow currently in terms of ensuring the public’s safety of some 40,000-60,000 people using late night licensed premises over the weekend nights and seeking to get home safely.

**Communities**

See comments above re Local Licensing Forums and their role in community engagements.

**Monitoring & Compliance**

The extension of police powers to Off Sales highlighted in the Bill is welcome. The issue of “pre-loading” through Off Sales by groups of binge drinkers before a night out in Glasgow city has been highlighted a key concern at a recent conference of over 100 stakeholders. Robust measures are required to do more to control irresponsible sales and promotions through Off Sales in terms of tackling binge drinking, problem drinking generally and the increasing trends of overall levels of alcohol consumption.

**Irresponsible Promotions**

See above point re Off Sales. Given the amounts of relatively cheap alcohol that can be bought in Off Sales, including supermarkets, it is difficult to understand why the irresponsible promotions elements of the Bill has not been extended to Off Sales.

In Greater Glasgow in 1998, 37% of men and 12% of women exceeded safe recommended weekly limits for alcohol consumption. (In 2000, this was estimated to be in the region of 30,000 men). The availability of cheap alcohol through Off Sales undoubtedly plays the part in rising alcohol consumption trends (not just by young people). The research undertaken in Glasgow licensed premises, mentioned at the point below, also provides some evidence that binge drinking behaviour in licensed premises is not confined just to younger group of drinkers. It also indicates
the links to ‘pre-loading’ – the practice of drinking (usually cheap) alcohol purchased from off-licenses and consumed at home or immediately prior to participation in the night time economy. This practice has several implications for alcohol-related disorder associated with licensed premises, including that pubs may be unfairly blamed for the consequences of this drinking behaviour and that any price increases imposed on pubs to reduce binge drinking may only serve to encourage such activity.

In Greater Glasgow, alcohol related deaths and hospital admissions continue to rise and alcohol related crime indicators also are also steadily increasing. This would seem indicate that the trends of increasing consumption, wider availability of alcohol and low price, all play some part in alcohol related harm being evidenced in public health statistics affecting all age groups, not just young people in Greater Glasgow. It is accepted, however, that young binge drinkers are also a key concern. SALSUS 2002, for example, reported that Off Sales were the main sources of commercially bought alcohol for 15 year olds (32%) and shops (19%).

There has been recent research undertaken in Glasgow City on factors associated with alcohol related problems in licensed premises (as yet unpublished). This concurs with the views express by one consultee on the White Paper that other factors in licensed premises contribute to irresponsible drinking such as ambience (heat and noise), availability or not of food, the types of clientele frequenting the premises, general state of premises, stewarding, marketing practice and the uptake of responsible server training for staff. Therefore, while measures to curtail irresponsible promotions are very welcome, the Bill could consider strengthening factors known to promote safer drinking environment through national standards and operating plans etc. This would ensure that factors, which are known to promote safety in licensed premises are proactively adhered to by licensees alongside the crack down on irresponsible drink promotions intended by the Bill.

The research also appears to highlight that, despite measures being taken by the authorities to prevent irresponsible drinks promotions, some chains of pubs are currently able to circumvent these by holding their prices at very low levels indefinitely and by using their own promotional TV channels characterised by techniques that would contravene many codes of practice covering broadcast TV advertising. It may be important for the committee or in due course to review local policies to control binge drinking/irresponsible promotions and highlight this practice.

Appendix 1

Greater Glasgow Alcohol Action Team

WHITE PAPER RESPONSE

Chapter 1-The Licensing Principles

The Greater Glasgow Alcohol Action Team welcomes and strongly endorses the setting out of core licensing principles as a basis for the new Act and a clear framework for the operation of a clear licensing system.

Chapter 2-The National Policy Framework

Should we seek to ensure a measure of national consistency by balancing Board discretion with an emphasis on a set of standard national licence conditions supported by detailed statutory guidance?

- National standards are a good idea but consideration has to be given to special cases such as rural areas
- Local influence within a clear national framework to be valued
- Suggestions for national conditions-drug policies, standards of door stewards, use of plastic drinking containers
- Priority policies in relation to no proof no sale, irresponsible promotions, access by children
Do you agree with the issues identified so far for those standard national conditions (off-sales, adult entertainment and late opening premises are covered in Chapter 4):

- No-proof no-sale
- Irresponsible promotions
- Access by children
- As above, agreement

What other issues would be suitable for national standard conditions?

- As above-suggestions
- Possibly smoking (although this is being considered in a separate consultation)

Do you think that on some of these issues the formulation of national conditions should remove the need for additional local conditions? If so, on what issues would this apply?

- The national conditions should negate the need for local conditions on these issues for instance the ‘no-proof-no-sale’ issue, however it will be important for Licensing Boards to be actively engaged in the process of developing and agreeing areas for national policy.

In the interests of best use of Board resources and offering certainty on policy for the licensed trade and local communities, should Board Statements remain current for 2 years? If not, what period would you propose?

- Suggestion 2 years is too frequent – 5 years is proposed.

Chapter 3-Licensing Boards

Do you agree that Board membership should be limited to a maximum of 10?

- Yes, this ensures flexibility and assists in a range of views being represented but at the same time keeping the number to a manageable size

Licensing Forum

What is the best way to ensure close co-operation and an effective relationship between the Licensing Board and the Licensing Forum without compromising the independent nature of either body?

- More national guidance on the make up of the forums i.e. rural v urban, particularly in the case of geographically larger board areas. The issue of meaningful community engagement in licensing issues needs to be addressed, and processes such as developing links with local alcohol/addiction forums developed.
- Realistic assessment of how local communities can become meaningfully engaged in the process
- Must be a good relationship between Board, Forum, AAT etc. The Alcohol Action Team endorses strongly the statement that it should be a statutory requirement for Board’s to have regard to the Forum’s views.
- Some concern was expressed at the independence of the licensing forum since it is proposed that the local authority, who make up the Licensing Board, appoint it. Guidance on how to establish forums locally that involves bodies such as Alcohol Action Teams would be welcomed.
- Guidance on formalising relationship between forum and board with guidance on frequency of meetings etc
- Local Forums must ensure wide involvement and links with local good practice
Chapter 4-Licences

Standard national licence conditions

Should we seek to maintain high standards in the industry by developing standard national conditions for off-sales and the provision of adult entertainment and either national conditions or guidance for late opening premises?

- Agree strongly
- Agree—off sales and links to anti-social behaviour is clear and late opening and entertainment are places where local communities expect to see high standards

At what point should premises be considered “late opening”?

- 10pm sufficient for off licenses
- Expert Group may have to decide this but 11pm is an expected closing time so beyond this may be a late opening

We would welcome your views on the types of conditions that might be imposed.

- Age restrictions
- Reduce the limit on noise levels after 11pm
- Penalties imposed on licensees as well as late licence being revoked for police call outs and breaking any conditions
- Security staff trained to a required standard
- Conditions that uphold the licensing principles
- Conditions relating to restricting the sale of alcohol to people who are drunk and incapable
- Links to the comments under Irresponsible Promotions

Premises licences

We would welcome your views on whether there should be closer co-operation between the planning and licensing regimes at local level.

- Yes, some concern expressed about the importance of linking operational plans with Fire regulations
- Yes but be aware of resource implications for some partners

Occasional permissions

Do you agree that we should seek to impose some controls on occasional permissions for voluntary organisations?

What would be the best way to do that?

- Publication of an information booklet outlining clear responsibilities
- LLSO’s could monitor in conjunction with Police

Overprovision

Do you agree that Licensing Boards should be required to actively assess overprovision within their area with the results reflected in their policy statement?

- Agree—of great concern to local communities
- Links with licensing forum
- National guidance with room for local discretion
- Ask the communities their views and opinions
Chapter 5-Licensing Hours

Do you agree that there should be presumption against 24-hour opening in Scotland with limited exceptions set out in statutory guidance?

- Relaxation of operating hours for licensed premises could have serious consequences for policing
- Presumption against 24 hour opening in line with the interests of public health and public order
- Strongly agree that there should not be 24-hour opening
- Board discretion to determine according to local needs

What limited exceptions should be allowed?

- Exceptions must be strictly controlled, limited and adequately supervised
- All licensing on merit of individual cases

Chapter 6-Communities

Should we widen the range of people who are in a position to object legitimately to a premises licence application by allowing anyone with a real and material interest to forward objections or representations for consideration by the Licensing Board?

- Strongly agree, but national guidance is needed, on who can object
- Guidance should be made available on supporting people to object highlighting differences in the kinds of support different groups in communities will need i.e. Sensory impaired, BME, asylum seekers etc. This could include clear written guidance for local communities and links to comments made under Board policies.

Should immediate neighbours, community councils, the Chief Constable, fire authority and relevant departments of the local authority be entitled to receive written notice of an application from the Licensing Board?

- Strongly agree
- Agree—but timescales for notification should be included

Is a radius of 4 metres sufficient to define those neighbours entitled to receive written notice or should this be wider?

- Strongly disagree, 4 metres isn’t sufficient
- Overly restrictive for something as important as a new licensed premises
- Feel strongly that this should be widened

Chapter 7-Monitoring and Compliance

Do you agree that Liquor Licensing Standards Officers should be employed by local authorities rather than by Licensing Boards?

- Yes to ensure impartiality but smaller boards might have a funding issue where there was some suggestion that funding for officers may be related to a proportion of revenue from alcohol sales
- National Guidance must be given on how this role complements police roles and responsibilities.

Do you have further views on how a tiered complaints system should work and what the range of sanctions should be?

- Tiered complaints and sanction system within the framework of the five principles seems robust and transparent
In view of the rigorous nature of monitoring under the new system and the tiered approach to complaints and sanctions, do you agree that license suspension should take immediate effect until a hearing or interim suspension before a Sheriff?

- Strongly agree

Chapter 8-Training

Do you agree that Board members should be obliged to undertake their mandatory training within 3 months of elections before sitting?

- Agree strongly

Do you agree that personal licence holders should be obliged to undertake refresher training every 5 years?

- Agree strongly

Do you agree that all permanent members of staff who are serving alcohol should receive appropriate mandatory training to an agreed national standard?

- Agree strongly

Do you agree that casual staff should be exempted from this requirement but should receive basic on site training by a personal licence holder subject to a statutory definition of “casual”?

- Some agree
- Some disagree
- Comments that LLSO’s could monitor this so it isn’t abused
- Training should be to national standards and some of it could apply to casual staff
- Casual staff shouldn’t include door stewards who need to be trained and accredited

How should “casual” be defined? Would a period of 2 or 3 months be appropriate?

- Not about defining casual but agreeing when does casual become permanent therefore there should be basic minimum training for all staff as soon as they begin employment to prevent loopholes in training
- Must tie in with employment law regarding the nature of casual

Should the designated personal licence holder be placed under a duty to ensure that training of permanent staff is carried out?

- Yes-agree
- In a good position to do so but depends on their skills

How can this best be monitored?

- Monitoring of training should be an issue monitored by LLSO’s
- Clear national standards set prior to implementation so that training isn’t abused
- Provision, content and learning outcomes of training to be addressed in partnership with the Alcohol/Drug Action Teams

Chapter 9-Irresponsible Promotions

Do you agree that the issue of irresponsible promotions is best tackled at a national level?

- A national issue requiring a consistent approach, whilst allowing for some local flexibility
- This must be tied in with other areas of alcohol policy
Do you have any views on how an “irresponsible promotion” can best be defined?

- One aimed at encouraging alcohol consumption in someone under 18
- Recognise this importance of this and that it is a complex area
- Likely to lead to inappropriate consumption where profit is maximised without due concern to public health or order, examples happy hours etc or all you can drink for… promotions

**Chapter 10-Children and Young People**

Do you agree that with a view to ensuring the protection of children, licensed premises should be required to “opt-in” to the new system subject to a set of standard national conditions and a simple administrative procedure?

- Yes—strongly agree
- Should be very strict guidance to ensure that pubs opt in
- Restrictions on the amount of time children can be allowed in
- Must be in no smoking areas
- Good enforcement methods in place
- Charter in place and visible for parents to see with a message about sensible drinking to encourage parents to be more responsible
- Sensible drinking message on toilets, children’s menu
- All of these issues should be incorporated into a clear operating schedule for the premises
- Restrictions should be permanently displayed for enforcement purposes
- Child Protection Training should be offered where children are permitted to access licensed premises, this is an issue that should be taken up at the National Forum level, considering the role of licensed premises in monitoring the safety and well being of children within their premises, including how parents behaviour could be monitored, the effects of alcohol on young people and so on
- Given the importance of involving parents in promoting family friendly environments, it is noted that there should be clear links with the National Communications Agenda for alcohol

Do you support a no-proof no-sale approach for Scotland, extended to all licensed premises?

- Strongly agree
- Given that this may increase agents buying for young people, a campaign of education/enforcement around the sale of alcohol by agents to young people may need to be introduced
- Fits with the licensing principles
- The Greater Glasgow Alcohol Action Team considers that although the proof of age card is a reasonable measure in trying to tackle the sale and supply of alcohol to young people, consideration should be given to asking the population up to the age of 30 or older for ID. This is successfully in use in New Zealand and parts of the US, where asking for ID becomes part of the “norm”, so young people are not singled out. Although it is appreciated that this may be out with the scope of the Act, this could be an area for more investigation within the alcohol policy field.

**Chapter 11-Registered Clubs**

What conditions should be attached to the premises licence to recognise the special character of clubs?

- Registered clubs should be brought into the licensing system

Do you also agree that the bar manager or steward should be the designated personal licence holder?

- Yes
Are there any very small clubs which should be exempt from the personal licence requirements?

- No

Chapter 12-Fees

Do you agree that a retention fee for premises licences should be charged?

- Yes - role of the Expert Group to consider

How can this best be done?

- A retention fee should be required on an annual basis and failure to pay may result in the licence being reconsidered

Chapter 13-Board Procedures

A3 Notice

Do you agree that every premises applying for a licence should display a pro-forma A3 notice for 21 days?

- Strongly agree
- National licensing forum will design this
- The Alcohol Action Team noted the recommendation to discontinue the process of advertising applications in the newspaper: 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.

Board Hearings

How can we make Board hearings less intimidating?

- Publish a clear leaflet especially for those attending a Board meeting for the first time
- Move Board hearings around the local area to increase visibility
- Consult and get feedback from local forums
- Board should reflect/represent all age groups. If this isn’t possible, thought should be given to liaising with appropriate age groups on specific items.
- Mobile unit for suggestions and queries going around the communities seeking opinions before Board meetings
- Responses from partners of the Alcohol Action Team made specific comments regarding the process of objecting to a license. Two points were made: support has to be made available to people to help them to raise objections and whilst the White Paper recognised that recommendations or objections could be made, this didn’t resolve the issue of the potential intimidation of people having to appear in person at a Board to object. It is hoped that the National Forum looking to make Boards less intimidating would give further thought to this issue.

Chapter 14-Appeals-no questions relating to this chapter

Chapter 15-Miscellaneous Matters

Sale of Alcohol-Petrol Stations

We would like to hear further views on the merits of preventing petrol stations from selling alcohol and whether we can limit such sales to those premises, which provide an important community function as the local shop.

- Related to Overprovision
Encourages people to have a drink problem
Understand the issue about rural areas but is questionable

Sale of Alcohol-Trains
Should the police be provided with power to seek a court order banning the sale of alcohol for certain train lines at certain times where they are a persistent source of nuisance and disorder?
- Yes
- May be complex given many train journeys are UK wide
- Needs consultation with the British Transport Police

Sale of Alcohol-Ships
Should passenger ships and boats be included in the licensing system where journeys are between points in Scotland?
- There appears to be no logical reason why not

Sale of Alcohol-Wholesale
Do you agree that wholesalers should be brought within the licensing system?
- Yes, agree
- Wholesalers must come within the licensing system, whether mail order, internet, telephone

Sale of Alcohol-Internet sales
Should those who run mail order, telephone and Internet alcohol sales businesses be required to hold a personal licence?
- Yes, see above
Should their storage premises be required to have a premises license?
- Although this appears simple and straightforward the Alcohol Action Team wondered why this is necessary, since alcohol is not being sold or ordered from these premises and since this may have significant implications for many businesses. The Alcohol Action Team would welcome further thought on this issue.

Additional Comments
- Onus on the applicant for a premises or personal licence to provide accurate information concerning the source of finance and Licensing Boards take into account any concerns expressed by the Chief Constable
- Proceeds of Crime Act with regard to finances
- National database management of personal licenses-clarification of this
- Owners of premises should be vicariously liable for behaviour within premises
- Financing of LLSO’s problematic for some areas where the suggestion is that finance will come from proportionate sales
- Definition of ‘fit and proper’ person needs to be tightened up
- Restriction on people under 18 working in a licensed premises should be retained
- There are great concerns about licensing from local communities who responded including suggestions for culture changes around alcohol and the importance of recognising the impact of licensing decisions on local communities well-being
Moray Council on Addiction

The Moray Council on Addiction (MCA) is a voluntary organisation and a registered charity which was established in 1979. The Board of directors comprises various backgrounds and include a representative from Diageo, a Police Superintendent, a retired teacher, an Accountant, a solicitor, two representatives from Moray Licensing Board. MCA is based in Elgin and is part of Moray Drug & Alcohol Services. The office is open Monday – Friday 9.00am – 5.00pm and 2 evenings a week.

It is concerned with all aspects of alcohol and drug use with particular regard to the problems those substances can cause. We work with clients who wish to be either completely abstinent or to cut down or control their substance use. We also offer counselling to those who are affected or concerned by someone else’s substance use.

Moray Council on Addiction works as part of an integrated service known collectively as Moray Drug & Alcohol Services. Involvement with any of the other services is only with direct permission from the client. MCA comply with data protection and offer a confidential service.

Our trained counsellors assist anyone to identify and assess their problem and to develop structures to deal with it, thus creating an individual and unique treatment programme within a confidential environment. Our counsellors undergo rigorous selection and training and are closely supervised. As well as receiving ongoing support, their standards of counselling are carefully monitored before and after accreditation.

The counsellor will help the client explore the problems they are experiencing and look at ways in which they can make changes and find solutions to their problems. Any life changes they choose to make will be a personal decision. The counsellor will not tell the client what to do. However, they will be directive in helping the client explore and resolve their ambivalence about change.

Our counsellors do not restrict themselves solely to working with someone’s addiction problems since these seldom occur in isolation. They are able to tackle significant areas with which the client is experiencing difficulty, as well as tackling such matters as the development of other areas of life skills.

We also offer counselling and support to partners, concerned relatives and friends affected or concerned by someone else’s substance misuse.

The Council is represented today by Iain Campbell Chairman of the MCA since 2003 and by Neil Ross a past Chairman and a Director since 1989. Iain Campbell is employed by Diageo and Neil Ross is a local solicitor with an interest in Licensing Law.

Moray Council on Addiction (MCA) is intrinsically against the irresponsible use of alcohol and fundamentally for the promotion of responsible drinking through knowledge and education.

As a rural organisation we have not experienced problems to any significant extent from irresponsible drinking events or binge drinking at licensed premises. Indeed it has been our experience that binge drinking, in our area, is related to home drinking.

We do have reason to believe from our experience that people tend to drink to a specific monetary value of consumption irrespective of the cost of individual drinks and that potentially irresponsible off trade promotions have a more significant impact on binge drinking in our area.
The Convener: We move on to further consideration of the Licensing (Scotland) Bill. I welcome our first group of witnesses. Niall Stuart is the deputy parliamentary officer for the Federation of Small Businesses. Niall, please will you make some introductory remarks about the bill before we move on to questions and answers?

Niall Stuart (Federation of Small Businesses): Thank you, convener. I will not say anything about being described as the first group of witnesses. John Downie was meant to appear with me today, but he was unable to come, so I convey his apologies. My task is made easier, as I will not have to fight between the STUC and John Downie to get a word in edgeways in answering members’ questions.

I will keep my opening remarks brief, as I have set out our concerns in my written evidence. The Federation of Small Businesses represents around 19,000 businesses in Scotland. Some 11 or 12 per cent of those are involved in the hospitality industry and so will be affected by the new licensing regime. As our written evidence states, we are happy with the principles of the bill. The licensing objectives seem eminently sensible, so we would be hard pushed to argue with them.

However, we have some specific concerns. As previous evidence sessions have highlighted, the bill will impose potential costs on business for training and licence fees and the licensing standards officers who will need to be employed could result in an increase in costs for small businesses. Businesses will also face increases in administration due to the requirement to obtain professional drawings of a building’s layout for building control purposes when they submit their licence application.

On a more general point, because so much of the bill merely confers delegated powers on the Executive, it is quite difficult to comment on the proposals in detail. We hope that, down the line, the Executive will use common sense in ensuring that any further conditions that are introduced are always appropriate to the risk involved and are related to the five licensing objectives that are set out in the bill. Obviously, the conditions that should apply to a small licensed cafe with very little footfall should be different from those that apply to a large city-centre nightclub.

I want to clarify the suggestion in our written evidence that small businesses in which the premises manager holds a personal licence face a potential problem in finding a replacement if the manager leaves their employment. We have
suggested that a small premises could be prevented from trading in such circumstances. However, the Executive has clarified that the bill provides for a six-week transition period in which such businesses will be able to find someone else with a personal licence or seek to vary their premises licence.

The Convener: I thank Niall Stuart for those opening remarks.

Bruce Crawford (Mid Scotland and Fife) (SNP): In earlier evidence, the Scottish Licensed Trade Association expressed concern about the proposal to reduce the number of types of licence from seven to one. What is the FSB’s reaction to that? In particular, do FSB members have concerns about the continuation of long-standing arrangements that ensure that pubs and nightclubs have differential permitted hours?

Niall Stuart: I have read over the evidence that has been given in previous evidence sessions. It is clear to us that licensing boards will be able to distinguish between different applicants. The bill requires the operating plan to state clearly what kind of trade will be carried out in the premises. It is clear that the operating plan for a nightclub will be very different from that for a small cafe. Whether the premises is involved in off-sales or on-sales will also be apparent in the operating plan. I guess that the reduction from seven types of licence down to one is not much of an issue for us. We welcome the simplification and the clarification that the bill provides in requiring businesses to set out in their operating plan how they intend to trade.

Bruce Crawford: Have you given any thought to how the over-provision issue might be affected if we have only one licence type? If a particular licensing board dealt with over-provision by allowing only so many licences for a particular area, the reduction in the number of types of licence could have an impact on various businesses. Do you have any concerns about that, or are you relaxed about it?

Niall Stuart: Again, we feel that the bill allows licensing boards sufficient discretion to distinguish between different kinds of operation. Whether licensing boards take into account both off-sales and on-sales when they assess over-provision might be an issue, but the bill is clear in allowing them to distinguish between different categories of licence holder in making assessments. We do not see any big problem with that issue.

Bruce Crawford: On costs, it is perhaps understandable that the business interest is opposed to the proposed fees. However, if we are to employ licensing standards officers and require people to undergo additional training, increased costs are inevitable. Licensing boards accept that any increased costs will need to be recovered through a fee process. Your written evidence highlights how that could have an impact, which you might want to say more about today. If there is to be a recovery process, how best might such fees be set? Should they be based on the existing rating system, turnover, profit or square feet? Does the FSB have a view on the most equitable way of collecting such fees?

14:15

Niall Stuart: I would be failing in my duty as an employee of the Federation of Small Businesses if I did not highlight cost as a concern among many of our members in the licensed trade. It is logical: no business would be pleased to have to pay more to continue its current operation. Our written submission contains some simple arithmetic that I did on the financial liability per licence holder of employing licensing standards officers. 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.

There is no other option but to set fees centrally. However, that creates a slight contradiction because, as the financial memorandum states, the cost per licence of policing licences in a small local authority is greater than the cost in a large city, where there are economies of scale. Therefore, it is hard to set fees centrally and merely recover costs, because costs are greater in certain parts of the country.

The FSB does not have strong views on whether turnover or rateable value is the fairest way to determine what fees businesses should pay. For the licensed trade, rateable value already contains an element of footfall and turnover through the valuation process, so that is probably the most rounded measure of a business’s ability to pay.

Mr David Davidson (North East Scotland) (Con): In your written evidence on premises licences—this relates to Bruce Crawford’s first question—you placed great stress on the fact that, although licensees who opt to allow children to access their premises will have to offer baby changing facilities, that will not apply to other establishments that have to allow children access. You have expressed the difficulty that some of your members will have in making the change because of the structure of their premises. Do you see that provision as the thin end of the wedge and believe that the same will apply in other areas of the FSB’s activity?
Niall Stuart: We had not thought of that. The point that we wanted to make is that we do not understand how that mandatory condition relates to the five licensing objectives, which are clearly outlined at the beginning of the bill. We would not be so upset if the recommendation was that baby changing facilities should be made available where possible, but it is a bit much for a small premises that does not have the space to provide such facilities to be denied a licence on that one side issue.

Mr Davidson: In the same section of your submission, you mention
“the Bill’s stated objective of ‘introducing a simpler, flexible and more modern licensing system’.”

Will you expand on your comments? You have not stated in your written evidence what the FSB would like.

Niall Stuart: The point that I was trying to make in the submission is that the provision on discretionary powers on late-opening premises does not sit easily with the stated objective of introducing a more modern, flexible system. On the whole, the bill moves towards such a system, as premises licences will not need to be renewed every three years, personal licences will run for 10 years and the current annual applications for extensions will no longer happen. Once the system is in place, it should result in businesses having to do less work on applications for licences, but the requirements for training and to submit operating and layout plans will create extra administration for some businesses.

Michael McMahon (Hamilton North and Bellshill) (Lab): I am sure that you have followed our discussions on who can and cannot object to licence applications. The bill’s provisions allow anyone from anywhere to object. Are they correct or would you like to argue for an alternative?

Niall Stuart: We do not have an alternative, but we hope that there will be explicit guidance from the Executive on what a licensing board can rule out as a vexatious or frivolous objection. I hope that licensing boards will be sensible in using the measure, so that they do not have to have unnecessarily long meetings at which frivolous objections—whether from religious groups or others who would simply oppose any licensing application—hold up the process.

Michael McMahon: Is it important to focus on what constitutes a proper objection, rather than where it comes from?

Niall Stuart: Possibly, yes.

Tommy Sheridan: I am interested in the evidence that we have received that there has been an inordinate increase in the number of licences in Scotland that is not commensurate with the population. In other words, the number of licences has increased considerably, despite the fact that our population has declined. Does the Federation of Small Businesses have a view on the overall health aspect of the bill? Should you as an organisation aspire to help us to deal with over-provision and try to curtail the availability of liquor, in particular cheap liquor?

Niall Stuart: The bill sets about doing that in a number of ways, the most obvious being the ban on any variation in price within 48 hours. Over-provision reflects different drinking practices. Many cafés that would not have been licensed before are now licensed. I have followed the committee’s evidence sessions, and I know that there has been much debate about what constitutes over-provision and how it is defined. 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.

Tommy Sheridan: Do you have any problems with the bill’s provisions on local community input when considering over-provision? Does the bill provide for enough local input?

Niall Stuart: If a licensing board considers over-provision to be a legitimate reason to object, I am sure that anyone who objects will have an opportunity to put their case.

Tommy Sheridan: Your comments on grandfather rights indicate that the FSB hopes that existing businesses will be able to continue operating. You also say that other businesses should not have a less level playing field, which indicates no restriction on future licences. There seems to be an inexorable rise in the number of premises that are able to sell drink. Does the FSB have no overriding social comment on that?

Niall Stuart: The increase in people’s alcohol consumption can be addressed in a number of ways. The licensing system must ensure that people who are in the privileged position of being able to sell alcohol—a restricted drug—are clear about their responsibilities and the rules, and know that they must be followed and enforced. There is only so much that can be done through the licensing system. At the end of the day, only a finite amount of business can be done in the licensed sector. If people continue to go out on Friday and Saturday night, there will be more licences, but if the demand does not exist, people will not apply.

Tommy Sheridan: In your evidence you make the point on behalf of small businesses that you do not want more red tape. Generally, you find that
regulations can be troublesome, particularly for smaller businesses, if overheads are attached. Do you accept that we are dealing with a unique substance here? We are not dealing with clothes or cars; we are dealing with a substance that is potentially lethal and, according to the evidence that we have received, causes huge health problems throughout society. Surely you accept that stricter regulation of the sale of that substance should be welcomed.

**Niall Stuart:** We accept—with some of the caveats in our written evidence—that licence holders’ responsibilities should be clearly stated. We might quibble about whether the implementation of some of those responsibilities could be better, but we do not argue that people do not have responsibilities as a result of being in the privileged position of selling alcohol.

**The Convener:** You will have read in our debates that one issue that we have examined is the fact that the restrictions on so-called irresponsible promotions fall more heavily on the on-trade than on the off-trade. The unit cost of alcohol in the off-trade is considerably lower than it is in the on-trade. Many premises—whether they are small shops or supermarkets—appear to sell alcohol at well below its cost price. Given the discussion that we have just had about the special status of alcohol as a product, would it be appropriate to introduce measures to restrict the use of alcohol as a loss-leader, which might encourage footfall inappropriately compared with another product that does not have the same potential for harmful effects?

**Niall Stuart:** The FSB has long argued for all loss-leaders to be outlawed, because they give bigger businesses an inherent advantage over smaller businesses, which cannot afford to carry the extra overhead. I am not sure how that would be implemented in a way that does not become anti-competitive, which has been the stumbling block for a couple of licensing boards that have tried to limit promotions such as happy hours.

**Paul Martin (Glasgow Springburn) (Lab):** Your submission says:

> "Those bars opting to allow access to children will be required by the Bill to have baby changing facilities in both male and female toilets, or in a unisex toilet."

You say that that is impractical and that we should not expect establishments to meet such basic requirements when catering for children. You do not want establishments to provide baby changing facilities, so what is the FSB’s vision of what should be provided?

**Niall Stuart:** We can all think of examples of small licensed cafes or pubs, especially in rural areas, that have only one toilet cubicle for males and females. Our concern is that it could be impractical for them to create baby changing facilities without expanding toilets or extending premises. It is unfair to require the provision of such facilities simply to obtain a licence as a means of encouraging children in such establishments. Implicit in the bill is the intention to liberalise the attitude towards children in bars, which we encourage. As I said, we have no problem with encouraging bars to put in place such facilities. My worry was that they would be impractical to create in some bars, and that such bars should not be barred from obtaining a licence as a result.

**Paul Martin:** You are saying that when a family with children use a bar in which it is structurally difficult to deliver the requirement, they would not have access to the service, whereas they would in other bars that have the facility or have the opportunity to expand and provide the service. In this ambitious Scotland with ambitious businesses, which the FSB promotes, why should we have a two-tier system? Why should Scottish companies not have ambitions to deliver 21st century establishments, taking into consideration some of the accompanying costs?

**Niall Stuart:** As I said, all that can be done is to encourage businesses to provide the facilities. At the moment, businesses that are open to children, such as cafes, are not required to provide such facilities. All I did was to query whether it is fair to require licensed premises to do what other premises are not obliged to do.

**Paul Martin:** An option is available. Establishments do not have to provide for children. Are you saying that if establishments want a licence that allows children access, they should be able to have that regardless of whether they provide baby changing facilities?

**Niall Stuart:** Yes.

**Paul Martin:** So we would have a two-tier system. You promote a two-tier system in which some establishments provide facilities and others do not.

**Niall Stuart:** From a practical point of view, a baby can be changed without the availability of baby changing facilities.

**Paul Martin:** I am the father of a 15-month-old child and I disagree.

**The Convener:** That brings us to the end of questions.

14:30

**Mr Davidson:** I want to ask a question that follows on from Tommy Sheridan’s question about grandfather rights. It relates to the comment about transitional arrangements.
Niall Stuart stated that the FSB needs a fair transitional system. The federation assumes that anybody who holds a licence will continue to hold one under grandfather rights. The issue is the transition period and what changes must be made or new boxes ticked because of the bill. What minimum standards does the FSB believe there should be when the bill is introduced? For how long does it expect the transition period to continue to allow its members to make the necessary changes?

The FSB submission states that the federation does not want to see business activities unduly restricted. However, it has a slightly protectionist stance about those businesses with grandfather rights, regardless of whether they operate to the appropriate standard. In the FSB’s view, where does the improvement in basic standards fit within the transition period?

Niall Stuart: Any timescale would be slightly arbitrary. Let us say that the bill is passed. For the first year of its operation, new applicants would have to use the new system while old applicants would have their licences renewed according to the existing regulations. I argue that that would give businesses that must renew their licences the following year a one-year period in which to get ready for the change—to get the necessary drawings in place and training completed, and to become familiar with the new legislation. When that year is up, all existing licence holders will have to renew their licences in accordance with the new regulations. Obviously, there will be a three-year period during which those who were previously licensed under the old system will have to renew their licences. They will have to meet the requirements of the new system at that stage.

Mr Davidson: Does the FSB believe that there is an opportunity to lift basic standards in all premises that currently have a licence, or is it being defensive on behalf of its members?

Niall Stuart: No; inevitably the extra requirements will lift standards. If there is a transitional phase of one year, and if everybody who renews a licence does so under the new system, that will give them time to get ready for the change. Given that the bill introduces such a radical change from a law that has been in place for many years, three years is not an unduly long time.

Mr Davidson: I have sympathy with that point, but I am trying to tease out whether the FSB wants currently licensed establishments to roll on as before, with no change apart from some measures that must be taken, or whether it sees this as an opportunity to move forward and to compete with the chain stores in the marketplace.

Niall Stuart: My point is that after the transition phase, anyone who renews a licence will have to renew it under the new regulations. Therefore, all establishments will be fully caught up within the confines of the bill.

Mr Davidson: Is the FSB happy that that should be the case, and that there will be a level playing field?

Niall Stuart: Yes.

The Convener: That definitely brings us to the end of our questions. I thank the FSB for its evidence.

I welcome our second panel, which comprises two representatives of the Royal College of Nursing Scotland: Hazel Watson, professor of nursing at Glasgow Caledonian University and chair of the nursing council on alcohol; and Geoff Earl, community psychiatric nurse with Lothian NHS Board and RCN Scotland board member for Lothians. The panel members may make an opening statement.

Hazel Watson (Royal College of Nursing Scotland): We welcome the bill as part of the strategy to reduce the level of alcohol-related harm in Scotland. We recognise that there have been escalating health and social problems associated with alcohol over the past 30 years or more and that there has been a fairly significant rise, over the past 20 years, in the levels of morbidity and mortality associated with alcohol use. We see the bill as a positive step towards a public health approach to reducing the toll of alcohol-related harm.

The Convener: Thank you. We will begin our questions.

Paul Martin: I would like to ask Hazel Watson and George—

Geoff Earl (Royal College of Nursing Scotland): My name is Geoff, as the convener said.

Paul Martin: I am sorry. Your name-plate says George.

One of the main aims of the bill is to deal with irresponsible drinks promotions. You probably welcome that. Are there any other ways that we could help to prevent the drinks industry from finding loopholes in the system?

Hazel Watson: I feel—and I think that our members also feel—that 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. I also note that the provision does not extend to off-sales premises. It
would be helpful if that provision were to be extended.

Geoff Earl: The Royal College of Nursing does not want just to transfer the problems of alcohol abuse away from pubs and clubs to the home, given the statistics relating to domestic violence that is associated with alcohol abuse. Just moving the problem from one area to another would not help us. The issue needs to be considered in a wider context that includes off-sales.

Paul Martin: From a medical point of view, is it the consumption of large amounts of alcohol in a short period of time that causes a large number of the cases that you receive, or is it a mixture of both kinds of consumption?

Hazel Watson: Both, I think. Accident and emergency admissions show evidence of a sharp increase in the number of people who are admitted as victims of assault and the effects of intoxication. That is certainly part of it. There is also the impact on general health and well-being.

Geoff Earl: We have also seen an increase in the incidence of liver cirrhosis. Liver disease from alcohol is often associated with longer-term abuse, but it can result from binge drinking. If someone has a high intake of alcohol, their liver may have one or two days to recover but it does not have long enough to clear it out before they put large amounts of alcohol back in. Binge drinking when there is a gap of only a couple of days before the person does it again can lead to the same damage that results from long-term abuse with smaller amounts.

Paul Martin: I represent Glasgow Springburn, one of the constituencies, along with Shettleston, that contains a high incidence of liver disease. I do not see a large number of drinks promotions in the establishments there; most of the drinks promotions seem to take place in Glasgow city centre. Do you think that, when we look at the statistics five or 10 years after the bill is passed, we will see a massive difference in the liver disease statistics?

Geoff Earl: The Federation of Small Businesses mentioned earlier the increase in the number of licences. In the city centres, there are probably too many businesses chasing a decreasing number of people who have the money to spend on alcohol. It is probably true to say that binge drinking occurs more in city centres. However, binge drinking is a wider problem that affects areas outwith city centres, because in addition to the phenomenon of drinks promotion a culture is developing in which binge drinking is an acceptable norm in Scotland and the rest of the United Kingdom. Many of us learned to drink when we were younger by drinking with older people. We learned how to behave in certain establishments. Now there is a culture of going out and binge drinking in a group, which is regarded as acceptable behaviour whether people are drinking in or outwith the city centre.

Hazel Watson: Perhaps there are fewer happy hours bars or student booze cruises in Springburn, but I imagine that off-sales promotions have an impact on drinking over a long period.

Michael McMahon: We touched on the patterns of drinking that are developing among young people. The bill is aimed at the problems of alcohol in general, but there is a focus on young people, especially through the no-proof, no-sale approach. Will the approach be as effective as the Scottish Executive hopes?

Hazel Watson: I certainly hope so—it is better than nothing. Proof-of-age cards have been used fraudulently in the past, but I hope that training for bar staff and people who are responsible for licensed premises will help. Alcohol Focus Scotland suggested that staff should ask people for proof of age if they suspect that they are under 21, which would provide a bit of leeway.

Geoff Earl: Enforcement is crucial. In the past, legislation has not been enforced in Scotland—that is demonstrated by statistics on the refusal to serve drunks at bars and other such matters. The RCN hopes that whatever legislation is passed is enforceable. There must be work with law officers to ensure that the measures are not only enforceable, but enforced.

Michael McMahon: It seems to be a good idea to promote identity cards. Has the RCN promoted other measures to deal with developing patterns of drinking—especially among young people—that are missing from the bill?

Hazel Watson: The bill should be part of a package. Young people should provide proof of age, but there is also a big health promotion role for school nurses, for example, who can promote sensible drinking. However, school nurses are under-resourced. A couple of years ago a big change was made to their role and they were given the opportunity to be involved in education, but we need more, better-educated school nurses with specialist knowledge about how to work with young people to get the message across. There is evidence that young people miss school at the start of the week because of alcohol-related problems, which is horrendous.

Michael McMahon: I think that everyone accepts that there is a big problem, which we want to take every opportunity to address in the bill.

Geoff Earl: We must also consider matters that are outwith the bill and put in place resources. For instance, by 2010, every child in England will have access to a school nurse, but that pledge does not
apply to Scotland. Without such access, how will it be possible to develop responsible behaviour in young children? That will not work. It is necessary to fill in the gaps in the public health agenda. Deprived areas have specific needs and unless they are tackled, it will be difficult for the bill to work.

14:45

Dr Sylvia Jackson (Stirling) (Lab): I want to follow up a few points. When you mentioned each child having access to a school nurse, what did you have in mind? Would that involve a nurse being in a school for half a day a week, a day a week or what?

Geoff Earl: Each school should have a school nurse assigned to it. The RCN feels that a nurse should be attached to all schools, depending on their size—that does not necessarily apply to some of the smaller rural schools. If a school has 1,500 pupils, it is not unrealistic to expect that it should have a school nurse to deal not just with alcohol issues, but with other health matters such as the sexual health strategy. Every school should have a school nurse; posh schools have them.

Dr Jackson: My other follow-up is about enforcement, which I agree is important. What is your view on the LSOs? Given the issue’s significance, is it important that the Executive revisits the bill once it has been implemented to assess how its provisions are being enforced?

Geoff Earl: In most occupations, it is usual to have an audit after a measure has been taken to check that it is working, so I hope that the Parliament will audit how the bill is enforced. I do not understand the ins and outs of how changes would be made if the bill were not working, but an audit would be necessary to find that out. The nitty-gritty of the role of the licensing authorities falls outside the remit of nursing. That is a legal issue. We just know that the bill should be enforced rigidly. Other people will know how best to do that.

Dr Jackson: Although the bill contains a presumption against 24-hour opening, you will have noticed that it will mean that, through the individual operating plans, different licensed premises will be able to have different hours of opening. Rather than imposing statutory hours across the board, the bill leaves things much more open. What is your view on that?

Hazel Watson: Licence applicants would need to give a clear rationale for why their licence should cover the hours that they wanted it to cover. It would be helpful if the licences of all the premises in a given area did not cover the same hours, as that could impact on the amount of drunk and disorderly behaviour on the streets at closing time.

Geoff Earl: If we are guided by the principles that the bill sets out, which are about protecting public health and public safety and preventing public nuisance, the RCN tends to agree that 24-hour drinking is not a good thing because it can be abused. If there are people who want arrangements that fall outside that generally accepted principle, their case should be tested against the five principles that the bill establishes, which are to do with public health and public nuisance.

Nurses who have worked an all-night shift might like to go for a pint of beer before they go home to bed because that is their evening time. We acknowledge that right, but do you want to have people in a pub next door to your house as you are getting up to take the kids to school? Some people will lose out, but the guiding principles should reflect public health and other people’s rights.

Alcohol is a toxic, dangerous substance. Although it can be okay if used sensibly, we are still talking about a licence for a dangerous substance. We are therefore working under slightly different rules.

The Convener: Hazel Watson mentioned the impact on accident and emergency units and on police resources of people being out drinking heavily on peak nights. If permitted hours are decided locally, are you concerned that there might be a drift towards later and later opening? At the moment, most pubs close earlier than night clubs, but pubs might push to remain open as long as the night clubs, thus creating an even greater strain on the emergency services.

Hazel Watson: The licensing boards would have to be very aware of that possibility. It is interesting that it is proposed to have local arrangements within a national policy framework.

The local licensing fora could play an important role, which should be strengthened. I would like the fora and the licensing standards officers to have teeth. Dr Jackson referred to the powers of the licensing standards officers. I feel that the powers of guidance, mediation and compliance are important, but that the officers should also have powers to deal with premises where there have been breaches.

Reviewing and auditing were mentioned and those roles will be very important indeed. In a city such as Glasgow there could be several boards, so it will be important to have an overview. Although within areas there might be different conditions, boards should ensure that the licensing hours on either side of the boundary between one board area and another are not the same. 

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The Convener: Would licensing fora provide an opportunity for health professionals to bring to the attention of the licensing board statistics about alcohol-related admissions to hospital and alcohol-related assaults? At the moment, the police draw attention to incidents that are associated with particular premises, but there might well be a more general picture of alcohol-related hospital admissions that are not necessarily identified with particular premises. That picture might show whether the pattern of licensing hours was a problem.

Hazel Watson: We feel strongly that nurses and others who can offer a health perspective should be members of the fora, so that they can highlight particular local health issues.

Bruce Crawford: It would be great if we could change Scotland’s drinking culture through legislation but we would all acknowledge that that would be pretty difficult. However, one part of the bill begins to consider our drinking culture in our pubs and on our streets. I am talking about the part that deals with children and how they can be accommodated in licensed premises.

I know that all the witnesses on the panel were sitting behind when the chap from the FSB was talking about the problems that businesses might face in allowing children access to licensed establishments. What is your view on the bill’s provisions in that regard? Do you support the bill’s provisions, or would you prefer that we took a different approach?

Geoff Earl: I do not have the full provisions in front of me. The general principle is to turn what used to be drinking establishments into more family-friendly social gathering places. Abroad one is much more likely to find families in licensed premises—they can be places where people drink coffee, rather than just beer. More responsible behaviour goes with that. On the other hand, some of us have been to bars where there are children and where that is completely unacceptable. Earlier the point was made that, if an establishment is to have a licence that allows children to be present there, it should have facilities that indicate that it is a child-friendly or family establishment. That changes the culture.

It is not enough just to have children in a drinking establishment—that must fit into a wider pattern. If bad behaviour takes place in an establishment, the children will learn bad behaviour. However, having much stricter regulations that make clear what it means to have a family licence and requiring bar staff to undertake training so that they come down much more heavily on certain types of behaviour can make a difference. Generally, the RCN believes that turning drinking establishments into family-friendly social gathering places would help to improve the situation.

Bruce Crawford: Do you think that establishments should be required to opt into or to opt out of having a children’s licence?

Geoff Earl: They should probably have to opt out. It would not be possible to have a family-friendly nightclub, as hopefully most kids would be tucked up in bed when it was operating. I understand what you are saying, but pub culture is changing and is becoming increasingly family friendly. Encouraging that side of the trade may help. However, this is a difficult question and I do not know the answer to it.

Hazel Watson: I agree that establishments should have to opt out of having a children’s licence, for the reasons that have been suggested. Promoting drinking as a sensible activity that can enhance one’s pleasure in social interaction can only be positive, but we need to be careful about the environment in which that happens.

Bruce Crawford: As representatives of the Royal College of Nursing Scotland, you no doubt encounter in the places in which you work many youngsters who are the worse for wear because they have been drinking in local parks, as well as pubs. The bill is trying to address concerns about how supermarkets and off-licences operate their businesses. Geoff Earl said that he would prefer youngsters to be alongside adults, so that they can learn how to drink properly. I understand the optimism behind that sentiment. In Holland, 17-year-olds are allowed to drink beer, but not spirits, on licensed premises, which would seem to fit with the approach that you are suggesting. How do you feel about that idea?

Geoff Earl: It is already possible for youngsters to have low-alcohol drinks, such as shandies.

Bruce Crawford: As long as they are having a meal.

Geoff Earl: I would not like to put my hand up and say that we should do exactly what is done in Holland, because I do not have the relevant facts or statistics in front of me. This is a longer-term project—we are not seeking a short-term fix, but a long-term solution. We can make it possible for younger children to learn in a nice environment that drinking is one way in which people can enjoy themselves, or for youngsters to have a beer or two at a lower age, although I do not know how such a measure would be enforced. Those are ways of showing young people how to drink in a sociable way. The alternative is for them to find the nearest smoky Joe place when they reach 18 and to binge drink. If we offer younger people different options they will know what the possibilities are when they become legal drinkers and will not think that they have to behave in a
particular way. It is about optimism, but that is the point of the bill. We are saying that we can look to have a brighter, better Scotland that is no longer the sick man of Europe.

Tommy Sheridan: I note that neither Geoff Earl’s nor Hazel Watson’s name is on the written evidence that we have received. Are you fully aware of the evidence and, if so, can you speak to it?

Geoff Earl: I can speak to the RCN evidence.

15:00

Tommy Sheridan: In the second paragraph, you refer to the fact that the RCN has “endorsed the Executive’s broad approach and in particular the inclusion of protecting and improving public health as one of the five key licensing objectives set out in the Bill.”

You follow that with a reference to the policy memorandum. Does the reference to the five key licensing objectives relate to the policy memorandum or were you referring to another document?

Geoff Earl: No—that refers to the policy memorandum. Although I did not write that paragraph, when I read it, I took it to refer to the five key points that have been laid down as the basis for the bill, the aim of which is to address public health and public safety issues.

Hazel Watson: The five principles are:

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

Tommy Sheridan: Those issues are in paragraph 9 of the policy memorandum, but paragraph 5 states:

“There are four key issues that underline the approach the Executive has taken in proposing the new licensing system for Scotland. They are: reducing underage drinking, reducing binge drinking, providing a voice for communities, and modernisation.”

Geoff Earl: That paragraph is not what we were referring to in our submission.

Tommy Sheridan: I am sorry to be pernickety, but I am pressing you on the question because of my enormous respect for the RCN and its work. I was hoping that you guys would come to committee today and say that you are disappointed with some of the overall thrust of the Executive’s policy objectives. Nowhere in the policy memorandum does the Executive talk about reducing drinking in society as a whole.

I know that the Executive refers to under-age drinking and to binge drinking, but I can find no reference to the fact that society as a whole should seek to reduce its consumption of alcohol. The Executive talks about drinking only in terms of responsible drinking and so on. Surely the Scottish Government can take a more optimistic role and promote the fact that drinking is not all that it is made out to be and that it can be very harmful?

Geoff Earl: You are right. The RCN is more than prepared to accept that we may not in our submission have said exactly what we mean about drinking. It is difficult to talk about wanting everyone to reduce their drinking, because that will mean different things to different people.

The RCN takes on board the point you make. We accept that drinking is a way in which people act socially and that, although there are alternatives, they are not always available or visible to people—particularly people in deprived areas. To go out and do sport or go swimming is not always seen as being the thing to do, whereas going out drinking is.

The RCN would welcome lowered levels of drinking, but you have got me there, Tommy—I do not want to say something to which I give more weight than does my organisation. Without discussing the issue with my colleagues, I should say no more, other than to repeat your general point, which was that drinking is not the only social activity and people can partake of many other social activities.

Nurses see the results of drinking. Apart from on Sunday mornings, we do not see many people with football or other sports injuries; we see people with sports injuries much less frequently than we see casualties of drinking.

Hazel Watson: It is implicit in the document, but perhaps it needs to be said explicitly. Certainly, in its “Plan for Action on alcohol problems”, the Scottish Executive has made the point that it wants a reduction in alcohol consumption across the board.

Tommy Sheridan: That is the point on which I am disappointed. The remit of the Nicholson committee was to review all aspects of liquor licensing law in practice in Scotland, with particular reference to the implications for health and public disorder. That committee was also asked to recommend changes that should be made in the public interest. Its remit was not to consider health in relation to binge drinking or under-age drinking, but in relation to drinking.

I had hoped that the RCN, as an organisation that is concerned ostensibly with the nation’s health, would come to the committee and discuss overall drinking levels, regardless of whether such an improvement is achievable. We are realists in that we know that it would take a long time, but if we do not start to say sometime that overall drinking levels—not only under-age drinking or binge drinking—play far too great a part in Scotland’s culture, there will be no overall
improvement in health. I have a lot of respect for you, but I am disappointed in that I would have liked you to have been a bit more critical.

**Geoff Earl:** I will take that point back to my colleagues and raise it with them. When we consider the bill we are looking at wider issues, such as changing the culture of drinking and there being family-friendly public houses. We consider pricing of non-alcoholic drinks and provision of water and coffee, because in many pubs people still cannot get coffee and must instead have alcohol; the bill addresses that. It is possible that the RCN supports what you are saying but has not said so explicitly. Perhaps the RCN Scotland needs to consider that.

**Tommy Sheridan:** That is fine.

**Geoff Earl:** We see the bill as being an attempt to reduce levels of alcohol consumption.

**Tommy Sheridan:** All I am saying is that if you guys are not going to call for a reduction in overall drinking, we certainly will not get the licensed trade to call for it, because it makes money out of drinking. I hope that you can bend the stick a wee bit further in the direction of saying that walking, swimming, sport and so on are socially acceptable and should be promoted rather than going for a drink. Perhaps it is socially acceptable to go for a drink, but we should not promote it.

**Geoff Earl:** I very much take that on board.

**The Convener:** On the back of Tommy Sheridan’s point, would you agree that we have to consider the Licensing (Scotland) Bill in conjunction with much of the other work that is being done by the Health Department to promote sensible drinking and to make people aware of a safe drinking limit? The bill is not stand-alone legislation that is trying on its own to achieve change in people’s behaviour. A range of measures to encourage people to live healthier lifestyles are being implemented in schools, through general practitioners and through various health promotions.

**Geoff Earl:** That is exactly why the RCN supports what is being done. We acknowledge that that is the case, even if we have not said so as loudly as some people might like.

**Hazel Watson:** We said in our opening statement that we view the bill positively and as being one means by which to address the issue, but not the whole answer.

**Bruce Crawford:** Let me try to help with some of Tommy Sheridan’s frustrations. We are scrutinising a bill and considering what it might do to improve Scotland’s drinking culture. Obviously, we hope that the provisions will impact positively on public health in the future. There are measures in the bill that deal with children and with over-provision. It would be useful for the committee if you would tell us whether you have thought of other legislative tools that could be used—I mean legislative tools, rather than awareness raising or support—to improve the level of drinking in Scotland. When I say “improve”, I obviously do not mean to increase drinking, but to improve public health as a result of addressing alcohol consumption in Scotland.

**Geoff Earl:** I will take that matter back to my colleagues and discuss it with them. A measure that we have mentioned already is access to school nurses, which should be legislated on. The other point that we have mentioned, and to which you referred, is that there need to be laws to enforce whatever is decided upon. One of the problems is that measures are sometimes not enforced. Violence against nurses in accident and emergency departments is often fuelled by drink. The Executive has taken that on board and has introduced measures to address the problem.

**Bruce Crawford:** We do not need legislation to put nurses into schools—the Executive could do that as a policy requirement. I am trying to find out what new provisions could be included in legislation to help reduce the amount of alcohol that is taken in Scotland. I cannot see that we can take such action, other than the few measures that have been mentioned, but there may be other matters that we could address through legislation.

**Hazel Watson:** There could be curtailment of, or stricter controls on, advertising of alcohol. Some advertisements make bottles of alcohol look like bottles of perfume, with all sorts of sexual connotations. To my mind, they clearly infringe the voluntary code on advertising, but still they appear, as do many advertisements that seem to me to promote alcohol use by young people.

There are also issues about pricing policy, which relates to the point that was made earlier about drinks promotions. It has been shown here and in other countries that consumption falls after increases in alcohol taxation. I agree that we are aiming for an overall reduction in alcohol consumption throughout the population. When per capita consumption falls, there is a corresponding reduction in the number of alcohol-related health problems.

**Bruce Crawford:** That is useful. We have not heard much evidence on advertising, so perhaps we need to hear more.

**Hazel Watson:** There are also issues about promotion of alcohol through sports sponsorship. Many football clubs sell their strips to youngsters, but those strips advertise alcohol. We see six-year-olds and seven-year-olds on the streets with advertisements for Whyte and Mackay or Tennents on their clothes, which is inappropriate.
Another pricing issue is the fact that soft drinks often cost more than alcoholic beverages. If we are trying to promote pubs as child-friendly environments, such pricing is inappropriate. Also, all people, irrespective of their age, should be able to have a glass of water without having to pay for it—our tap water is not that bad. Cheaper soft drinks would also encourage people to drink more sensibly.

Paul Martin: Following on from Tommy Sheridan’s point, I do not think that the witnesses need to be rebellious—there must be a measured response, which I think has been the case. Geoff Earl made the point that he wants people to drink responsibly, so I take it that he wants some people to reduce their alcohol intake.

I will mention three aspects of the bill and ask whether you think they will contribute to achievement of those aims: first, the ban on drinks promotions through the 48-hour rule; secondly, the introduction of family-friendly environments; and, thirdly, the introduction of licensing standards officers to ensure that the regulations are enforced, including the regulations on drinks promotions. There are other measures in the bill, but will those three provisions reduce people’s alcohol intake and ensure that they drink responsibly?

Geoff Earl: The Royal College of Nursing’s view is that they will.

Paul Martin: To clarify, the bill is about regulating the industry, but at the same time it will improve health in Scotland.

Geoff Earl: Yes. When people look at legislation, they often think that their rights are being curtailed, but we think that you are trying to support responsible licensees and update our licensing laws so that they fit those responsible licensees. I would add one more provision to the three that you mentioned: training of staff who serve alcohol, because it is a dangerous substance. Good licensees already do the four things that the bill wants to achieve. The Parliament is just putting them in law and creating a level playing field for responsible licensees.

15:15

Paul Martin: Unlike the ban on smoking in public places, we are talking not about banning alcohol, but about regulating its sale while improving health.

Geoff Earl: The smoking proposals are not just about banning smoking; they are about responsible smoking and smokers not harming other people’s lungs. The same applies to drinking activities. If one drinks responsibly, there is not necessarily a problem, although I take on board Tommy Sheridan’s point that there are alternatives.

Hazel Watson: Paul Martin asked whether the three measures that he mentioned would ensure that people drink less. No such measure could ensure that they drink less, but it might encourage them to do so.

Paul Martin: So a reduction in drinking cannot be guaranteed, but it can be encouraged.

Tommy Sheridan: I have one final point on the issue that was just raised. A comparison was made between smoking and drinking—

The Convener: I would prefer not to have a debate between committee members at this stage. Do you have a question?

Tommy Sheridan: Yes, I have a question for Hazel Watson and Geoff Earl. Surely the RCN would not countenance in any shape or form the Executive’s promoting responsible smoking.

The Convener: We are drifting on to a completely different bill, and I would rather leave it—

Tommy Sheridan: My point is that there is a comparison with responsible drinking.

The Convener: The witnesses do not need to answer that. We are drifting on to a different bill altogether.

Geoff Earl: I understand the point that was made.

The Convener: That is the end of questions. I thank Geoff Earl and Hazel Watson for their evidence.

I welcome to the committee our third group of witnesses, which comprises Dr Mac Armstrong, the chief medical officer for Scotland, and Professor Peter Donnelly, who is the deputy chief medical officer. Thank you for hurrying along earlier than anticipated. That helps the committee, because we are making swifter progress than we anticipated. You may make opening remarks on the bill, after which there will be questions and answers.

Dr Mac Armstrong (Chief Medical Officer for Scotland): I will be brief. Members have a great deal of information before them already.

Alcohol over-consumption is a significant public health problem worldwide, particularly in developed countries, in which it ranks third in the World Health Organisation’s ranking of risks to health, after tobacco and high blood pressure. Of course, alcohol consumption is not unrelated to high blood pressure.

Alcohol consumption is an issue in Scotland; I have flagged it up in each of my annual reports
since 2000. In Scotland we aspire to reduce the rates of problem drinking, but the trends are going in the wrong direction. For example, in “Towards a Healthier Scotland” the target was to reduce the percentage of women who exceed the weekly limit to 12 per cent by 2005. The simple fact is that according to the 2003 figures, the percentage of women who were drinking more than double the weekly limit was itself 10 per cent. According to the latest surveys, the majority of 13 to 15-year-olds in Scotland have drunk alcohol. The number of referrals to the children’s reporter on the grounds of alcohol or drugs doubled in the five years to 2003.

The costs of such problems—in all, over £1.1 billion—for Scotland’s health and social services have been set out extensively. For example, the number of deaths that are directly attributable to alcohol, which is currently one in 30, is increasing. We are very anxious to help the committee to get the bill right and we are prepared to do all that we can to achieve that.

**Paul Martin:** I know that large volumes of such health statistics are made available for Glasgow Springburn on annual, biannual, quarterly and monthly bases. The bill will introduce a ban on irresponsible drinks promotions and will prohibit variations in drinks prices within a 48-hour period. I appreciate that the bill also contains other measures, but can you provide a quantitative indication of the extent to which those two measures will improve liver disease statistics in my constituency?

**Dr Armstrong:** I cannot promise that the provisions will have a measurable impact on liver disease because the key determinant in causation of liver disease is overall weekly consumption above the safe limit, rather than binge drinking. The bill’s measures on provision of alcohol in licensed premises are designed to reduce the possibility that binge drinking will take place.

I am in no doubt that deliberate targeting of available markets through drinks promotions has been a phenomenon in recent years and there is ample evidence to suggest that such targeting continues. For example, at the weekend I had a look at Datamonitor’s website, which provides marketing information to companies. The website highlights a recent Datamonitor report “New Trends in Young Adults’ Alcoholic Drinks Occasions”, which can be obtained for $5,695. Under the heading “Key reasons to read this report”, it says:

“Identify key need states that drive Young Adults’ consumption of alcohol and how to target the emerging occasions”.

There are people out there who are very much working to target our young adults.

**Paul Martin:** The bill’s provisions to curb binge drinking will not apply to off-licence trade. Should it be included in the bill?

**Dr Armstrong:** You are talking to the chief medical officer rather than to a law officer. I will expound at length on the law if you wish, but it would not do you much good.

You are absolutely correct to suggest that I am concerned about the other binge-drinking opportunities that exist. I draw your attention to another Datamonitor report entitled “New Opportunities in Drinking At-home”, which is available from the same website for, again, $5,695. A key reason that is given for reading the report is that it will help one to “Understand the drivers behind the drinking at home trend and how to target emerging consumer behaviors”.

Under no circumstances do I pretend that the bill on its own will provide a comprehensive set of levers to restrict the amount of alcohol that is consumed, but given that it has been designed following the Nicholson report principally to promote measures for the purposes of public order, public safety and protection of children, and to control irresponsible promotions and binge drinking, I believe that the bill is a public health measure that is worth supporting.

**Paul Martin:** The previous panel highlighted concerns about advertising of drinks promotions. Do you share those concerns? Do we need regulation to deal with that?

**Dr Armstrong:** Advertising is bound to have an effect on the emerging markets; evidence shows that that is the case. I am particularly concerned about the way in which advertising is used to promote drinking to emerging markets, especially women and young women. Peter Donnelly has looked into that issue.

**Professor Peter Donnelly (Deputy Chief Medical Officer for Scotland):** Drinking among young women in particular is a special area of concern. The percentage of women who drink more than the recommended limits, which—as members will know—for physiological reasons are somewhat less than the recommended limits for men, is increasing.

I find it particularly worrying not only that, increasingly, young people are drinking but that young people report being drunk on more than two occasions in the past. I refer the committee to international league tables on that: unfortunately, Scotland is at the wrong end of them. In other words, not only are our young people—by young, I mean 13-year-olds—regularly accessing alcohol, but their pattern of drinking is such that they are getting drunk. That is worrying because it
establishe...mum alcohol in society as those people begin to grow up.

The Convener: Some of the representatives of the RCN mentioned advertising. We have moved towards a ban on advertising smoking, but there is still extensive advertising of alcohol. My understanding is that that would have to be dealt with primarily at Westminster. In general, is that a direction that we should follow on alcohol?

Dr Armstrong: Yes. There is ample evidence that advertising affects markets and consumption, as does overall price. There is very good evidence for that on tobacco and I do not see why it should not be the same for alcohol.

The question of how we achieve our aim is difficult. One of the difficult messages to get across in positive alcohol advertising or other forms of advertising is the matter of the J-shaped curve in relation to alcohol. As I came in, I heard Mr Sheridan question the witnesses from the RCN about the difference between responsible smoking and responsible drinking. The fact is that there is—or, at least, there appears to be—a J-shaped curve for the general population in relation to consumption of alcohol. In other words, there is a level of alcohol consumption that is, overall, better for one than zero consumption. Total abstinence carries, to some extent, a small penalty compared with consumption within reasonable limits of a small amount of alcohol. The limits are, within the current level of evidence, well known and have been set out. No evidence says that of smoking, however, which is like radiation in that there is no minimum safe level and the harm from it is cumulative.

The Convener: I know that, as a retailer, the Co-op has started to state on bottles of wine a recommended daily intake or safe limit, along with how many units of alcohol are in the bottle. Many alcohol producers have started to go in that direction. Should we try to introduce a requirement on all sellers of alcohol—whether on-licence trade or off-licence trade—to place on the product prominent information about the units of alcohol in it and the daily recommended intake for a man or a woman?

Dr Armstrong: That is a good idea; it is in line with our taking any steps that we can to empower consumers. People should know about what they are buying, including the safe limit for its consumption, when there is a known safe limit. I think that there is some international evidence behind that. Some countries already label alcohol in that way. Is that right, Peter?

Professor Donnelly: Some countries are going down that route. Intuitively, it seems to make sense because the issue can be quite difficult. People talk about half a pint of beer being one unit, so a pint of beer is two units, but that clearly depends on the strength of the beer. A small bottle of imported lager can contain 1.7 or 1.8 units of alcohol. If you drink a couple of those, you will have used up more than your daily limit. We should seek to label alcohol in a way that makes sense to people and which answers the question, “How many of these can I safely drink in a day or in a week?”

Bruce Crawford: The convener asked whether advertising and labelling are reserved matters or whether the Scottish Parliament can deal with them. I am sure that you were consulted on the issue by the people who drafted the bill. Are you aware of any powers that are available to the Scottish Parliament or local authorities that we could use to give direction on either labelling or advertising?

15:30

Dr Armstrong: I am not aware of any powers in that respect, but it would be wise to ask somebody who has a deeper insight into the legal side of things.

Michael McMahon: The no-proof, no-sale idea has existed for a while, but it will now be a requirement under the law. Do you believe that it will achieve its intended effect and change young people’s patterns of drinking alcohol?

Dr Armstrong: Again, I do. Peter Donnelly might want to comment on the wider evidence from international experience, which is important in informing us whether we are moving in a sensible direction. Personally, I think that no proof, no sale is sensible. It is part of the range of measures that we need to introduce to change the culture. The Nicholson committee recommended a positive change to the culture, with the responsible use of alcohol as part of a more family-oriented approach in Scotland. The evidence from other countries is that such an approach will help. Where alcohol is consumed as part of a normal family approach to eating and drinking, and particularly where it is consumed responsibly with food, there is little evidence of harm.

On the culture that we are trying to attack in Scotland, the simple fact is that, as Peter Donnelly said, children well below the age at which they have legal access to alcohol are getting access to it. It is clear that people are not asking the right questions. The bill seeks to provide a simple route by which they can, within a proper framework, be trained to ask those questions.

Professor Donnelly: I agree with all of that, but I will briefly supplement it. As with so much of the bill, the proof will be in the detail of its application. What does no proof, no sale mean in practice? How hard will it be pushed? To give an extreme
example, when alcohol is served at some events in the United States, everyone has to prove that they are over 18—or, more often, over 21. That applies to everyone regardless of their age—even to people as ancient as me. Everyone wears a band around their wrist to show that they have been carded at the entrance and have proved their age. That might seem to be taking things to an extreme, but it is an effective way of preventing minors from purchasing alcohol at the event.

At the other extreme is the situation that the CMO describes, in which people have discretion over whether they card people and ask them for proof of age. Like so much of the bill, the provision depends on the detail of how it is implemented. Our plea is that the more you can do, as legislators, to push application and enforcement towards the harder end and make it meaningful, the better.

Michael McMahon: You mentioned studies from elsewhere. Have any of your investigations revealed examples of good practice beyond the no-proof, no-sale policy that you believe could be included in the bill? Is an opportunity to address patterns of behaviour being missed in the bill?

Professor Donnelly: I do not think that there is any other principle that could have been included in the bill. At issue is the detail of the bill’s application. I suppose that one could debate whether the age limit should be 18 or 21, as it is in many places in North America. Pragmatically, it is probably more important to enforce the age limit of 18 than to seek an arbitrary change to it.

Dr Armstrong: Knowing what I do about the threat to the health of the public and having some experience of the international context, I would say that we must presume that people will try to find a way around the legislation. Suppliers will attempt to find excuses to support the argument that it was impossible for them not to supply in order to keep a customer who they justifiably thought was over the legal age. Young consumers will definitely try to find a way around the legislation.

We rely on MSPs’ good sense to put the hardest possible edge on the bill. We are aware that you will be faced with arguments about the rights of the individual and curbs on civil liberties. That is in the nature of any debate about public health—there is nothing special about this situation. We are dealing with a potentially dangerous, lethal and addictive substance that causes harm in a cumulative way if taken to excess. We are trying to protect the public from that harm in a way that maximises their individual choice and civil liberties. Somewhere in the middle is a sensible set of proposals that will ensure that enough proof of age is required to satisfy the requirements for minimising under-age drinking.

Professor Donnelly: 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.

Some countries, especially the Scandinavian countries, are seeking to do something quite different. They are trying almost to create an alcohol-free childhood by separating alcohol and children in every way, including at sporting events. Only time will tell which approach really works. That illustrates once again the desperate importance of the detail of the legislation. What will licensees really have to do to convince the licensing board that it is okay for kids to be allowed on to the premises? Will they only have to pay lip service to the requirements, or will the process be challenging and meaningful? Will they have to demonstrate that they have good staff training and practices, for example?

Dr Jackson: You mentioned the dangers of excessive alcohol consumption, especially by younger children. The policy memorandum cites a study of young people in Edinburgh, which indicated that the most common source of alcohol for those youngsters was small licensed grocers. Could the bill be an opportunity lost if we do not extend it to include off-sales?

Dr Armstrong: I have no doubt about the fact that we should look seriously at off-sales. As I said, I know that the drinks industry—rather than the licensed trade—is targeting at-home drinking, the younger market and women.

Clearly, the bill is about licensed premises. Following the Nicholson committee’s examination of the problems of public order and public safety in connection with licensed premises, the bill sets out to give effect to the recommendations of that committee’s report, which are all very sensible. However, the bill does not tackle the big issue that you have described, which is the availability of alcohol to younger people through off-licence sales.

If you could extend the scope of the bill through a set of sensible amendments to tackle that issue, you would have my personal commendation for confronting an issue that needs to be tackled. My one caveat would be that we should not lose the baby with the bath water, given that the bill has a very specific purpose. However, if you wish to
press the Executive to introduce further controls on the back of the bill, you will have my personal commendation for doing so.

Dr Jackson: Can Professor Donnelly perhaps share with us his expertise on what recommendations on off-sales have been adopted in Scandinavian countries?

Professor Donnelly: Those who have never tried it before will find that buying alcohol in Scandinavia is quite an interesting experience.

Dr Jackson: It is expensive.

Professor Donnelly: It is very expensive, apart from anything else. Broadly speaking, I would say that in Scandinavian countries low-alcohol beer is sold through supermarkets and other retail outlets, but full-strength beer, wines and spirits are generally available only from particular liquor outlets, which are separated from supermarkets and other retail institutes. The process is somewhat like picking up a prescription, in that you need to get a ticket from a machine and wait your turn until you are eventually served. The order is then fulfilled exactly; the alcohol is put in a brown bag and you leave. The qualitative experience is quite different from buying alcohol in this country, where whisky or whatever can just be picked off the shelf. I do not advocate that we go down that route, but it is fair to give the committee a rounded picture of the different ways in which, even within an area as small as Europe, different Administrations seek to separate children from alcohol.

Bruce Crawford: That is interesting, but it actually makes our job quite difficult. The flip side of the example that you have given is the practice in Spain and Portugal, where I understand there are almost no licensing laws other than those that prohibit the sale of alcohol to people who are under 21. As legislators, we are in the difficult situation of trying to strike the right balance, but the balance that is proposed in the bill might be the wrong option. We may need to be much tougher, like the Scandinavians, but Spain and Portugal seem to adopt a tougher attitude about the age at which people may start drinking with no licensing laws beyond that.

It would be interesting to see what the statistics say about how successful new licensing systems have been in different countries. Perhaps we need further information about the success of the different approaches that have been adopted elsewhere and the base from which those countries started. That might help us to come to a more logical conclusion about what direction we should follow.

Dr Armstrong: That is why I have been commending the bill as it is written and have been cautious about suggestions that it could be extended to cover the whole field. The issues that you touch on are deeply cultural. You are absolutely correct: the Scandinavians have had a no-tolerance approach to alcohol for many years, but they still have a huge problem with over-consumption, hidden consumption and consumption to spectacular excess. They have the same set of stringencies around drink driving. They have had a 0 per cent approach for many years but their figures on fatal road accidents that are caused by alcohol are worse than ours.

By comparison, in the south of Europe there is, as Peter Donnelly said, a different culture. Alcohol is more widely accepted and is used in a responsible way, particularly in family situations. There is no culture of consumption to excess—in fact, there is a culture of frowning on such consumption. Again, that is not new and I could not track it back to any particular piece of legislation. It is deeply cultural. With the bill, we are attempting to take the next step by providing public health safeguards that will attempt to steer Scotland towards a different culture.

Bruce Crawford: In those circumstances, do you agree with the Dutch idea that it is better for 17-year-olds to drink low-strength beer in pubs than to obtain high-strength cider from supermarkets? Perhaps we should consider that idea to try to change cultural attitudes.

Dr Armstrong: Personally, I would agree.

Professor Donnelly: Mr Crawford asks a fair question, but unfortunately it is unanswerable in some ways because there is another factor: price. For many years, the Scandinavians limited affordability and consumption through punitive taxation, but it has become easy for people to go elsewhere and come back with almost unlimited amounts of cheap beer, wine and spirits, particularly with the accession of the Baltic states to the European Union. The Scandinavian Governments are now having, against their will, to consider dropping prices to avoid undermining their manufacturers and retailers. They predict that there will be an adverse effect on total consumption. Price is undoubtedly an important factor.

Dr Armstrong: I supplement my response to the question with a note of caution. What matters is not the strength of alcohol in a drink, but the number of units that are consumed. I am aware that young people can attack anything with gusto if they are so inclined and alcohol is, of course, addictive. The idea that people of any given age should be allowed unlimited access to so-called...
low-alcohol drinks must be treated with caution, but I appreciate the use of such drinks as part of an overall cultural approach to alcohol.

Dr Jackson: My question is on the opening hours of licensed premises. The bill has a presumption against 24-hour opening but, as you know, individual licensing boards will have great flexibility in considering the operational plans that are submitted to them. Are you concerned about the move towards more flexibility?

Dr Armstrong: Personally, I am not. 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. To my mind, the provision belongs with those in schedule 3 about irresponsible promotions. A board will be required to consider the whole package for which a licensee is applying, including opening hours, irresponsible promotions and so-called happy hours—the price reductions to induce excessive consumption over a short period. The package of measures is designed to reduce binge drinking.

Professor Donnelly: I agree. Again, the devil is in the detail and the outcome will depend on how local licensing authorities respond. Another helpful provision in the bill is the concept that one can deny a licence on the basis of oversupply—in other words, if there are already enough or too many outlets. The reason why that is important is that in some of our city centres there is oversupply and price-based competition. The combination of the fact that a licence can be denied because of oversupply and the provision to tackle unhelpful happy-hour type promotions might prove useful.

Tommy Sheridan: Peter Donnelly referred to sport. I share his view that there is a powerful argument for seeking to separate alcohol and sport. Many sports are dependent on alcohol sponsorship and that separation would need to be achieved in a sensitive and thoughtful way, but seeking to achieve it over time would be a good thing. Often when a football or rugby team or a sportsman wins an event the people who interview them on the radio or television make throwaway remarks such as, “There’ll be a few sore heads around Celtic Park or Ibrox tomorrow.” Generally, the manager or player agrees out of politeness, although many professional sportsmen do not drink at all and those who do drink very little. The few who drink to excess and end up in the newspapers as a result are far from typical. The trouble is that the message that gets through to our young people is that professional sportsmen and women drink a lot and celebrate every victory with a heavy drinking session. We need to change that false presumption.

Tommy Sheridan: Peter Donnelly referred to another issue. He might have answered this question, but I will give him a chance to think about it again. He referred to the attempt in Scandinavian countries to restrict access to alcohol to specific licensed outlets, whereas here we have a free-for-all. Do you support, on health grounds, the idea of supermarkets having separate tills and distinct areas where alcohol can be purchased rather than the current situation in which people buy alcohol along with their milk and bread? There is a normalisation of a product that is not as normal as all the other products.

Professor Donnelly: That is an interesting idea. I do not know of any evidence either way as to whether that would change people’s purchasing behaviour, but I take your point. It is desperately easy for people to push their trolley round the supermarket and load alcohol into it in the same way as they load anything else into it. We do not allow people to do that with cigarettes, which are dealt with in a different way. The suggestion might be worth considering.

I return briefly to the point about sport. I appreciate how difficult and controversial this would be, but I share the CMO’s view that there is a powerful argument for seeking to separate alcohol and sport. Many sports are dependent on alcohol sponsorship and that separation would need to be achieved in a sensitive and thoughtful way, but seeking to achieve it over time would be a good thing. Often when a football or rugby team or a sportsman wins an event the people who interview them on the radio or television make throwaway remarks such as, “There’ll be a few sore heads around Celtic Park or Ibrox tomorrow.” Generally, the manager or player agrees out of politeness, although many professional sportsmen do not drink at all and those who do drink very little. The few who drink to excess and end up in the newspapers as a result are far from typical. The trouble is that the message that gets through to our young people is that professional sportsmen and women drink a lot and celebrate every victory with a heavy drinking session. We need to change that false presumption.
Tommy Sheridan: I am glad that you made that point, because it ties in with the other point that I wanted to make, which is that the policy memorandum refers to the four key objectives of “reducing underage drinking, reducing binge drinking, providing a voice for communities, and modernisation.” My worry is that even if we reduce under-age drinking and binge drinking, we will still have a problem, because Scotland drinks too much. There is no distinct and overt policy objective to reduce alcohol consumption throughout Scotland. Do you agree that, regardless of whether it would be a forlorn hope—I know that it would be problematic—the Executive should at least promote reduced alcohol consumption as a whole, rather than homing in only on under-age and binge drinking? It is great if we reduce such drinking, but the health problems are broader.

Professor Donnelly: That is a good point. If the only effect of the bill was to target and penalise young people because they are perceived, rightly or wrongly, to be the people who are primarily involved in binge drinking, that would be a missed opportunity. The message that we want to get across is that the whole of Scottish society at all ages—men, women, kids and adults—would benefit from an overall reduction in alcohol consumption.

Dr Armstrong: The Executive is by no means unaware of that. The bill is just one element of the comprehensive “Plan for Action on alcohol problems”, which was published in 2002. The plan seeks to provide a comprehensive framework that strikes an appropriate balance between individual choice and public health protection in relation to access to alcohol; takes steps to reduce demand, principally through public education; provides an enhanced level of service for those who are addicted to this drug; and provides a backstop of legislative and fiscal controls, working with the United Kingdom Government wherever necessary, to put in place an appropriate set of checks, balances and levers. The bill on its own is not the answer; it is part of the answer. We have carried out a comprehensive review of progress over the past two years with the plan for action and will produce a revised set of proposals. I said in my report that they would be published in the spring, but I understand that publication is imminent; the proposals are being prepared for ministers and will be published in the next couple of months.

16:00

Tommy Sheridan: Could you ensure that we get a copy of the proposals? I take issue with you a wee bit. You are right that one piece of legislation cannot be the be-all and end-all, but if you remember, the Nicholson committee’s remit was to “review all aspects of liquor licensing law and practice in Scotland, with particular”—I emphasise that word—“reference to the implications for health and public disorder”.

The health issues have to be broadened and we have to get as many of them into the bill as possible because there might not be another licensing bill for a wee while.

Dr Armstrong: I very much welcome your approach. As I say, the bill is designed for control of the on-licence trade. You are quite right to say that the bill does not seek to implement anything that Nicholson said in his 100 recommendations about the off-trade; it is principally about the on-trade.

Tommy Sheridan: Your office is obviously very busy but, given some of the comments that have been made today about advertising, price controls, the supermarkets and sport, it would be helpful to have the CMO’s endorsement of, or at least promotion of, add-ons to strengthen the health-related aspects of the bill. Although I support the general principles of the bill, my criticism is that we do not emphasise the health aspects enough.

Dr Armstrong: I totally take that on board and I am grateful to you for your support. In my annual report I said that the update on the 2002 strategy would be available in the spring, but when I checked this morning I learned that the spring is being extended. I will make sure that you get a copy of the update as soon as it is available.

Margaret Smith (Edinburgh West) (LD): I have a comment to make before I ask you a question. We heard from the RCN about the key role that school nurses play in talking to youngsters about these and other issues, so I hope that school nurses will figure in your review of the plan for action.

Professor Donnelly touched on the issue of pricing. Do you have any further information about how we could make use of pricing as a tool to control demand, bearing in mind the fact that there seems to be a lack of clarity about whether or not it is a tool that we can use? Some pilot schemes have encountered difficulty but, according to a Westminster committee report, the Office of Fair Trading has said that pricing is a legitimate tool in the box. Do you have any comments on pricing generally?

Dr Armstrong: As I understand it, the bill will give local committees control over irresponsible promotions. Schedule 3 defines a variety of conditions, many of which have to do with pricing in relation both to the 48-hour rule and to irresponsible drinks promotions. As I understand it, the element of pricing that is reserved is excise
duty. As Peter Donnelly said, some countries, particularly in Scandinavia, have adopted a deliberate strategy of increasing the excise duty to penal levels. Somewhere between where we are at the moment and where the Scandinavians or other countries and cultures are, there is something that is appropriate for this country’s culture. The evidence on tobacco—and I have no reason to doubt that it exists for alcohol too—is that price is a significant lever in regulating overall consumption.

The Convener: Should we introduce regulations that proscribe the selling of alcohol at below cost price? There are certainly many examples in off-sales where alcohol is used as a loss-leader to get people in and to raise the footfall for the rest of the business. Should we do that? Do we have the devolved competence to do it or would we have to take it up at UK level?

Dr Armstrong: Again, I think that you need to take legal advice on that.

Professor Donnelly: My understanding is that there are two separate elements to that. One is taxation, which the CMO highlighted and which is reserved. The other, which is legally complicated, comes down to what constitutes fair trading and whether you would be suppressing competition artificially. You would need to take legal advice on that. However, there is no doubt that price is an important predictor of consumption. To put it bluntly, it has probably never been cheaper to get drunk, the consequences of which are there for all to see.

Margaret Smith: I wanted to get your thoughts on training, which is a significant part of the bill and brings with it a cost to the licensed trade. How important or useful do you think training might be in addressing the public health issues that we have been discussing?

Dr Armstrong: I broadly welcome the training, which does two things. First, having licence holders or the managers who are acting for them trained appropriately is bound to improve the service that is given to the public, because it will remove the defence that licence holders might use if they are hauled up by the local licensing standards officers that they did not know that their behaviour was inappropriate. They will be trained to a certain level and will therefore know what is and what is not appropriate. The leisure industry is not famous for high levels of pay, training or investment in any of its staff. I welcome the fact that the staff who are quite near the bottom of the food chain as far as income levels are concerned will have proper investment put into their futures. I hope that that will give them a better future as well as giving customers better service.

Margaret Smith: We have heard concerns about the fact that temporary staff and people involved in voluntary organisations, for example, are exempted from the need for training but, nevertheless, sell alcohol. Occasional licences might be granted in rural areas for events that are organised by the voluntary sector or community groups. Increasingly, those are the places where people are getting access to alcohol, certainly in social circumstances. Do you think that it would be valuable for us to provide that those staff should have to undertake some form of minimal training, or do the difficulties involved in that mean that we will just have to accept that we cannot do it?

Dr Armstrong: No. I do not accept that we cannot do that. I am well aware of the need to be sensitive and to acknowledge the special place in Scottish society of the voluntary sector and the way in which community groups need to come together to build stronger communities. I am not necessarily persuaded that the kind of venue to which you referred constitutes a significant threat of ready access to large volumes of alcohol consumed in excess. That is not a picture of voluntary groups and so on that I recognise.

Equally, as I understand it, we have not made huge exceptions in relation to food standards. All round the country churches and voluntary organisations have to ensure that where they provide tea, coffee and sandwiches, they comply with food standards. We can clearly provide training or certification for that kind of premises.

We have to consider carefully whether the exception is reasonable, given the level of threat that is posed by that kind of premises. From a public health point of view, I am not sure that I see the threat as significant, but you make a good point.

The Convener: That brings us to the end of questions. Thank you for your evidence, which has been helpful. That brings us to the end of consideration of the bill for today. We will now move into private session for agenda item 4.

16:11

Meeting continued in private until 16:13.
3 May (15\textsuperscript{th} Meeting, Session 2) (2005)) – Written Evidence

SUBMISSION FROM THE FEDERATION OF SMALL BUSINESSES

The Federation of Small Businesses is Scotland’s largest direct member business organisation, representing 19,000 members. The FSB campaigns for an economic and social environment that allows small businesses to grow and prosper. Around 2,000 of our members are involved in the hospitality industry so we have taken a strong interest in the work of the Nicholson Committee, and welcome this opportunity to comment on the Licensing (Scotland) Bill at Stage 1. To keep our response brief we have restricted our comments to the areas of the Bill which cause us concern.

PART 1: Core Provisions

Sections 1-4

The principles of the Bill are generally sound but we have a number of specific concerns relating to increased costs to businesses, both in terms of licence fees and in the potential increase in administration required by some of the provisions of the Bill, for example the requirement for increased documentation and training. This at a time when all levels of government in Scotland have finally accepted the need to keep business regulation and costs to a minimum in order to foster greater business competitiveness.

PART 3: Premises Licences

Section 19

A central part of the new licensing regime is the requirement of applicants to submit an Operating Plan, which sets out opening hours, layout of premises, seating arrangements, areas for children and so on. We would hope that regulations issued by the Executive require only appropriate and relevant information to be provided, so that this new requirement does not become too onerous for a typical small business, many of which are not accustomed to supplying this type of information.

It seems proper that different types of establishment should be expected to provide different amounts of information, for example, night club owners should have to provide a more detailed plan that a small café.

Section 25: Conditions of Premises Licence

We have two specific concerns about the Executive’s proposed mandatory and discretionary conditions outlined in Annexes A and B of the Memorandum on Delegated Powers.

Those bars opting to allow access to children will be required by the Bill to have baby changing facilities in both male and female toilets, or in a unisex toilet. This is simply impractical for many small establishments without significant structural adaptations to create space. Further, other establishments that allow children access are not required by law to provide these facilities so why should licensed premises have to when this requirement is in no way relevant to the Licensing Objectives outlined at the start of the Bill?

The Bill proposes to allow Licensing Boards to attach a series of discretionary powers to ‘late opening premises’, which it defines as those opening beyond 12 midnight. With current extensions this covers most pubs, and we are concerned that Licensing Boards could require bars that are open until 1am to, for example, install CCTV, charge an entrance fee, and provide door stewards. Whilst we accept that these conditions will be appropriate for a some establishments, if applied simply because a bar is open beyond midnight this is hardly consistent with the Bill’s stated objective of ‘introducing a simpler, flexible and more modern licensing system’. We would therefore expect more explicit guidance from the Executive on when it expects these discretionary conditions to be applied, presumably with reference to the Licensing Objectives set out in the Bill.
PART 4: Occasional Licences

Understandably, small licensed premises in rural areas are concerned about voluntary organisations effectively competing with them for trade. The Bill’s extensions to the number of Occasional Licences that organisations can be awarded threatens to make this situation worse. Licensing Boards should therefore be required to assess overprovision when determining applications for Occasional Licences.

PART 6: Personal Licence

General

The most immediate concern that we have about the new dual licence system is that the Bill as currently worded appears to require that where a premises manager leaves, is incapacitated, or dies, the premises cannot sell alcohol unless there is another Personal Licence holder in the establishment who can be nominated as the new Premises Manager by variation to the Premises Licence. Where there is no other Personal Licence holder it appears that another individual would have to obtain a Personal Licence (requiring a hearing of the Board and training) before an application could be made for a variation to the Premises Licence. This could obviously leave a small establishment unable to trade for a considerable period of time, which in many cases could be sufficient to bankrupt the business.

Further, it is unclear from the Bill as to how many different premises a Personal Licence holder can be named as the Premises Manager. If an individual can be named on numerous Premises Licences, businesses with more than one establishment may simply name one individual as the manager in a high number of bars in order to cut costs.

Section 78: Licence Holder’s Duty to Undertake Training

There are some concerns about the practicalities and potential cost of Personal Licence holders being required to undertake some form of training. For example, if the next available training course is in one month’s time will this mean that an establishment cannot open? Further, although the costs of the training courses mentioned in the Policy Memorandum as possible models for the new system are not particularly onerous (Servewise Plus: £85, Scottish Licensee Course: £150), applicants in remote and rural areas may be faced with distances to travel and overnight stays to access accredited courses. This obviously adds to the costs to the business, both in terms of time and money.

If Licence holders are to be required to undertake ‘refresher’ training every five years, we would hope that the course is genuinely a ‘refresher’, and not simply the same package of training as taken five years earlier, and that this is reflected in the cost and time.

Finally, the Policy Memorandum mentions two training units that are currently available within the licensed industry that could be models for Personal Licence holder training but until we have a more definite idea of what is being proposed by the Executive or the future National Licensing Forum, it is difficult for us to comment in detail on training.

PART 9: Miscellaneous and General

Section 127: Fees

We recognise that Licensing Boards are, and will continue to be, expected to recover costs through licence fees, but there is concern within the trade that new licensing system will result in a big jump in fees, which will be compounded by the new training requirements of the Bill. Obviously, the provision to differentiate fees according to sizes of premises should be used protect smaller businesses to some extent from huge increases in fees, although this may not be possible if the overall costs of the new system are so great.
We are slightly concerned by the provision in the Bill to charge businesses an annual fee [127(2)(b)], which is, as far as we are concerned, without precedent, and could be seen simply as a source of revenue for Boards.

Our main concern about the financial implications of the Bill is the funding of Licensing Standards Officers (LSOs). The Policy memorandum suggests that each Licensing Board area should employ between one and three LSOs, which, depending on salary, will have an annual cost of somewhere between £25,000 and £100,000.

Using the figures from the Financial Memorandum accompanying the Bill (page 42), it can be calculated that in the city quoted, annual liability per licence holder will be £55, if three LSOs are employed as envisaged by the Executive and the total cost is £100,000 (£100,000/1,800 licence holders). In the example of a small local authority this increases to £156 (£25,000/160 licence holders). These do not seem like a huge sum of money, but when compared to the current cost of a three year renewal (£78), it can be seen that this will result in significant increases in fees if these new costs are to be recovered through the fee system. We therefore believe that the costs of employing LSOs should be met by local authorities through their general funding, just as Environmental Health and Trading Standards Officers are.

Without a clearer idea of what Premises and Personal Licence fees, and the annual ‘retention’ fee are likely to be, it is difficult to comment further on fees. Obviously, we would be extremely concerned if the Bill resulted in a significant increase in costs to business.

**SCHEDULE 3: Staff Training**

The costs to business of the requirement for all staff should not be underestimated, especially in an industry with a high turnover of staff. Again, there may be practical problems for businesses in remote and rural areas where training courses may not be available, or staff may require overnight stays to access courses. All this adds considerably to the £55 headline cost of the Executive’s suggested model (Servewise).

**GENERAL COMMENTS: Transitional Arrangements**

There has been a significant amount of discussion in Committee evidence sessions on the difficult issue of transition to the new system. We believe that a transition period is the fairest way of implementing the Bill, whereby, for a limited period after the regulations of the Bill become effective new licences are awarded under the new regulations, but existing licences are renewed in accordance with the current system. This is not only necessary to allow licence holders time to prepare for their new requirements (training, obtaining plans, writing up operating plans) but also to stop Licensing Boards being overloaded.

We believe that a transition period would be fair, as long as the Licensing Boards actively inform existing licence holders of the new regulations and how to meet these. After this period is ends, all existing licences would run for their full term (i.e. three years), but would have to be renewed under the new regulations. This would mean that all licensed premises would be operating within the confines of the current Bill within three years of the end of the transition period.

There has been a lot of talk about ‘grandfather rights’ where all existing premises should be allowed to continue trading according to the current conditions on their licences. Whilst we do not want to see any business’s activities unduly restricted, we believe that it is only fair that all licensed premises ultimately operate within the same regulatory framework. There should however, be a presumption in favour of granting existing premises at least their existing opening hours, unless there is good reason not to.

Small businesses often struggle to adapt to new regulations, but businesses want to see all rules applied and enforced consistently so that nobody is put at a commercial disadvantage simply by operating within the law.
SUBMISSION FROM THE ROYAL COLLEGE OF NURSING

LICENSING (SCOTLAND) BILL

The Royal College of Nursing (RCN) is the UK’s largest professional association and union for nurses, with over 370,000 members (35,500 in Scotland). Most RCN members work in the NHS, with around a quarter working in the independent sector.

The RCN works locally, nationally and internationally to promote standards of care and the interests of patients and nurses, and of nursing as a profession. The RCN is a major contributor to the development of nursing practice, standards of care and health policy.

Reasoning behind the introduction of the Bill

In our evidence to the Scottish Executive consultation on liquor licensing last year RCN Scotland endorsed the Executive’s broad approach and in particular the inclusion of protecting and improving public health as one of the five key licensing objectives set out in the Bill. We believe that the fact that the policy memorandum not only highlights the potential cost to society of the misuse of alcohol in paragraph 3 but lists reducing underage drinking and binge drinking as key issues that underline the Executive’s approach to the development of the Bill demonstrates the importance that the Executive has attached to these issues. RCN Scotland welcomes the fact that health issues have been clearly highlighted in this way in relation to the development of this legislation.

Key issues raised by the proposed legislation

Our primary areas of interest in relation to this Bill are, as we have already stated, with its potential health and social impact. Nurses and other healthcare workers have to deal with the results of the abuse of alcohol on a daily basis, including the violence and accidents that can occur as result of short-term abuse, as well as the longer term effects of alcohol on the health of individuals. In addition the financial cost imposed upon the NHS, and wider society, as a result of the misuse of alcohol is clearly demonstrated in paragraph three of the policy memorandum. So from our point of view the potential for tackling binge drinking, other alcohol abuse and the impact that this has on communities are the most important issues that arises from the legislation.

We are pleased that the Executive has publicly highlighted the ways in which the Bill will put in place a more modern and responsive licensing system to tackle Scotland’s poor record on alcohol by reforming existing laws, dealing with underage-drinking, cracking down on binge drinking and involving communities in licensing policy. Fostering a responsible and sensible approach to alcohol throughout society must at the heart of this legislation and we are confident that the Bill.

Consequences of the Bill’s enactment

As we have stated we welcome the policy intentions behind the Bill and would obviously hope that the intended outcomes in terms of protecting communities from the ill effects of the misuse of alcohol, supporting responsible members of the licensed trade and complementing wider action on tackling the misuse of alcohol will be achieved as a result of enacting this legislation. We do not have any specific comments on the detail of the changes to the licensing laws proposed by the Bill.

Consultative processes

RCN Scotland was satisfied with the consultation process prior to the introduction of the Bill and welcomed the opportunity to provide a response from a wider public health perspective at that stage. We are pleased that the views of health organisations have been sought and clearly been listened to during the consultation and that the potential impact of the Bill on public health has been so clearly accepted and acknowledged from the outset.

We accepted the consultation’s premise that licensing is only one means of dealing with the misuse and used the opportunity to highlight the important public health role of nurses in Scotland, particularly in schools to educate children and young people about the dangers of alcohol abuse.
Promotion and education about the use of alcohol is vital in tackling alcohol related problems in the long term and clearly the aims of the Bill can help to contribute to achieving these goals.

However we would also take this opportunity to highlight again the need for further ongoing investment in other measures such as those referred to above. The school nursing service in Scotland is under resourced and we are seeking a commitment for every child to have access to a school nurse, a commitment which the Department of Health in England has recently set for 2010. The latest figures on clinical nurse specialists in NHS Scotland also just 5.8 whole time equivalent staff in Scotland specialising in alcohol, with most NHS boards having no clinical nurse specialists whose primary area of clinical practice was alcohol. This again highlights the gaps that still exist in provision for dealing with the affects of the misuse of alcohol.

In conclusion RCN Scotland is keen to promote the health dimension to this Bill is pleased that the Executive has been clear in making the links between licensing reforms and health improvement up to this stage in the development of the legislation. We have accepted the Committee’s invite to give oral evidence and our contribution will be from the public health perspective.

We hope these comments are helpful.
The Convener: We move to item 2, which is stage 1 of the Licensing (Scotland) Bill. I welcome to the committee Tavish Scott MSP, the Deputy Minister for Finance and Public Service Reform. He is supported today by Jacqueline Conlan and John St Clair. I will give the minister the opportunity to make some opening remarks about the Licensing (Scotland) Bill, after which we will move on to a series of detailed questions about the evidence that the committee has taken thus far.

The Deputy Minister for Finance and Public Service Reform (Tavish Scott): Thank you, convener. I am glad to see you looking so healthy after the weekend’s festivities in Orkney—I take it that you attended the symposium on Monday morning.

The Convener: I enjoyed the visit to Orkney very much. I met many of your constituents, who discussed many issues with me.

Tavish Scott: I am pleased to be here this afternoon for the committee’s detailed consideration of the proposed licensing reforms. I do not want to say too much because a lot of the rhetoric is well understood and today’s committee meeting is not about that. As the convener said, today is about the detail of the bill; we will do our very best to answer the committee’s questions. I have read the evidence that has been taken and I note the range of evidence and witnesses. The evidence is important from our perspective because it informs our consideration of tweaks that we might want to make to the bill.

The bill is only one aspect of the Executive’s wider approach to alcohol and alcohol misuse. On its own, legislation will not solve all the problems of alcohol misuse, so the wider issues on alcohol consumption are being worked on by colleagues in the Health Department through such initiatives as the plan for action on alcohol problems.

That is really all that I want to say. I would very much like to get on with the nuts and bolts, if that is agreeable.

The Convener: Thank you. It is helpful that you kept your remarks short, given that we have a range of issues to try to get through this afternoon.

I will start off by asking you about the ministerial guidance that will be issued to licensing boards. It is understood that that guidance will be issued and that a national forum will be established to inform the process. When will that forum be established? Who is likely to make up the membership of the forum? What will be the qualifications and coalface...
experience of the licensing process of its members? Will they take the trade’s perspective or the local authorities’ and regulatory perspective? What about concerns that have been expressed that the process for appointing members of the national forum has not been included in the bill? What degree of parliamentary scrutiny will there be of the appointment of its members?

**Tavish Scott:** The answer to the first question is that we hope to have the national forum set up by this summer. The forum is not to be a public body, so the public appointments system that applies to public bodies and the establishment thereof simply does not apply in this case. That judgment was based on what we hope the forum can do and on our ability to review it as much—to be frank—as it was based on Parliament’s desire to avoid where possible the establishment of public bodies. We think that we can achieve our policy objectives, which were explained to the committee when Jacqueline Conlan and other colleagues gave evidence at the start of the bill process. Some of that evidence is therefore on the record.

On the responsibilities and skills of the people who would be appointed to the national forum, we see the forum being comprised of people who have a direct interest and understanding of the trade and related issues in alcohol and licensing reform. I have explained the timescale and said why we will not make the forum a formal public body.

**The Convener:** I understand the issue about trade interests. Would the range of interests of the bodies that are to be represented on the forum go as wide as to include, for example, the police or health authorities, which are able to comment on issues around irresponsible promotions?

**Tavish Scott:** We have not come to a final view on that, but we are happy to write to the committee as we clarify and finalise our thinking. I also stress that we will review the forum after two years; if we do not get the balance right or if there is concern—from Parliament or any other quarter—that we have got the balance wrong or that we have missed someone out, we will reconsider the membership. We intend to come to a final view on that in the summer. We will certainly write to you to ensure that the committee is kept up to date. If members want to express any views, we will be happy to take them on board.

14:15

**Mr David Davidson (North East Scotland) (Con):** Will you write to various organisations to invite them to put people up to be vetted, or will you and your department simply make decisions?

**Tavish Scott:** We will do the latter, because I will chair the forum, as Sheriff Principal Nicholson recommended. It is important that we ensure that we make the appointments, not least because we will be accountable for them. You will not be surprised to hear that we have debated the matter in our many discussions on the construction of the bill and in on-going discussions on licensing reform matters that are covered in other parts of the bill. The proposals are well understood and well known; there is no shortage of people who think they should be on the forum.

**The Convener:** We will now discuss a different matter—licensing boards and licensing forums.

**Tommy Sheridan (Glasgow) (SSP):** Before we do so, will the minister say whether the bill’s aims on consumption of alcohol in general are strong enough? If the minister has been following the evidence, he will know that I am worried that the Scottish Government is not firm enough about reducing alcohol consumption across the board. Young drinkers and binge drinking seem to be targeted, but what about alcohol consumption in general?

**Tavish Scott:** I accept that there is an entirely legitimate debate to be had about legislation reflecting not only what might be seen as the narrow reform of licensing laws on the purchase and sale of alcoholic products, but the wider issues including what some people might argue are the more important health-related issues. Mr Sheridan will be entirely familiar with the principles behind the bill and will know that health is a core principle. The Nicholson committee dealt with health issues and we strongly endorse what it said. Encouraging health is a principle behind the reforms, which answers the member’s question to some extent.

It is important to think about alcohol consumption rather than merely to tackle fine although important points—as some might see them—that relate to misuse of alcohol. In recent days, the committee has probably received evidence—which I have not read—about the overall cost of alcohol having fallen in real terms over a period of years. I understand that alcohol is cheaper than it was in the past, which is why we have been keen to tackle issues to do with irresponsible promotions.

I accept Mr Sheridan’s contention about the importance of tackling overall levels of consumption, but I suggest that we are doing so by reforming licensing law through the bill: after all, it represents the first time in 30 years when such issues have been addressed. I hope that Mr Sheridan accepts that we are also doing that in a number of other areas and across departments. It is often said that the Government does not do enough cross-cutting work across its departments, but there have been meetings with the trade that I have chaired jointly with the Deputy Minister for...
Health and Community Care, Rhona Brankin, for example. During those meetings we have taken on board the point that Mr Sheridan and many other people have made to us about the need for the Government to tackle the problem as best it can, or at least to consider issues relating to the extent of alcohol consumption rather than only alcohol licence reform.

**Tommy Sheridan:** I am pleased with what you say and hope that you will not mind if I press you a bit more. You mentioned the principles behind the bill, but the principle of reducing overall alcohol consumption in Scotland is not a stated aim or objective in the bill. Should it be?

**Tavish Scott:** I think that we have got the balance right. As Mr Sheridan will be aware, we have followed the Nicholson recommendations carefully. The Nicholson committee was established to tackle licensing law reform and I believe that it had regard to important principles such as those that relate to health. We know about the statistics on the costs to the national health service that are attributable to misuse of alcohol; the bill is how we have sought to address the issue. I believe that we have got the balance right, not least because we have followed the principles that Nicholson laid out. That is all that I can say on that point.

**Tommy Sheridan:** I shall move on to a question about the licensing board, although I point out that there has, in the past eight years, been a 66 per cent increase in the number of admissions to hospital for liver problems that are directly related to alcohol use, and there has been a 58 per cent increase in alcohol-related deaths. Whatever we are doing now is not working, which is why I had hoped that there would have been a tougher statement on reducing overall alcohol consumption.

On the bill’s proposals on the size of the licensing boards, you will be familiar with some of the concerns that have been expressed. Are you now willing to concede that there may be a need to examine more closely the suggestion that three people could be a quorum for a licensing board in Glasgow, which covers nearly 1 million citizens? Do you accept that that is not acceptable for a board that will have authority for such serious issues?

**Tavish Scott:** I accept that. I have been persuaded of that, not least by the evidence that has been given to the committee and by meetings at which that point was put to me in fairly stark terms. I accept the point that Mr Sheridan and the committee have made. As far as I can see, section 5 of the Licensng (Scotland) Act 1976 allows a quorum to be as low as three, although it is generally supposed that it will be half of a board’s membership. We would be happy to continue with that, but we shall reflect on what the committee says in its final report. I accept that we need movement on that.

**Tommy Sheridan:** You will be aware of my correspondence with you in connection with the concept of decision making being local, because one of the bill’s stated aims is to give a voice to communities. Are you willing to be a bit more proactive in giving evidence to us today about encouraging local licensing boards to be local? In my view, having one licensing board for the whole city of Glasgow or the whole city of Edinburgh does not give a voice to communities. Would you encourage local authorities to consider having a number of boards instead of one board?

**Tavish Scott:** As members know, local licensing boards can establish a divisional structure. Mr Sheridan and I may just have to disagree on this point, but 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.

**Tommy Sheridan:** To mirror the board, the bill makes provision for licensing forums. You will have heard the evidence relating to there being a voice for communities. Under your current construct of licensing forums, communities would have only a limited voice on the forums. Would you be willing to look again at the membership and make-up of forums in order to provide more room for communities to be represented?

**Tavish Scott:** 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.
Tommy Sheridan: I would like to move on to promotions, but I do not know whether you want to take supplementaries, convener.

The Convener: We will deal with a couple of other areas first, and then come back to irresponsible promotions.

We want to ask you about premises licences, minister. You will have noted from the evidence that some witnesses, most notably the Scottish Licensed Trade Association, criticised the proposal to have a single type of premises licence. How would you respond to that association’s suggestion that there should be at least three different categories of premises licence—off-licence, on-licence or general licence, and an entertainment premises licence. It believes that that would make it easier for boards to distinguish more clearly where there is overprovision of a particular type of licensed premises, as opposed to a general overprovision of licences.

Tavish Scott: This is important and I am glad that the committee has had a good look at the matter. It is important to start from the accepted premise of the Nicholson committee, which is that the current seven types of licence are inflexible and, more to the point, outdated in terms of how the trade now operates. I would be pleased to have it confirmed that we all agree that we want to avoid what Nicholson called “licensing by stealth”, in terms of the changes that have taken place to the way in which licensing conditions operate under the current regime.

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—as I am sure the committee recognises—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 observing 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.

The Convener: Could it be difficult for licensing boards to decide on overprovision? I can think of areas where licensing boards might take the view that there are sufficient or perhaps too many off-licences, but if a restaurant applied for a licence the board would be inclined to accord the application. Could it be difficult for boards to draw distinctions if they refuse an application for an off-licence on the ground of overprovision, and then subsequently receive an application for a different type of licensed premise of which there is no overprovision?

14:30

Tavish Scott: 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, I expect that the kind of problems that the convener mentions will not come to pass.

As the process works through—you should bear it in mind that the transitional period will give everyone the chance to get fully up to speed with how the interpretations will work appropriately in local circumstances—the operating plan and our associated proposals will deliver what we have in mind.

Bruce Crawford (Mid Scotland and Fife) (SNP): On the conclusion that the most satisfactory way forward would be to have a single licence, how much cognisance did the Executive give to the developing licensing scene, particularly with regard to hybrid facilities? There have been big changes in the market; many hybrid licensed premises offer a cross between a nightclub and a restaurant and others offer food, drink, sport and entertainment as part of the package, along with conference facilities. Furthermore, some hotels are, to be frank, pubs with a couple of rooms stuck on the side, whereas some pubs operate more like hotels.

Tavish Scott: You make my point for me. I agree with Bruce Crawford’s illustration of the current scene; you have done a lot of research and I can only commend you for that.

Bruce Crawford: The Opal Lounge in Edinburgh is an example of the type of place I am talking about, I am told.

Tavish Scott: The sheer range of licensed premises is incredible. There are also, dare I say
it, licensed cafes, although no Liberal Democrat would go to a cafe bar—I say that looking closely at Margaret Smith.

The differentiation in the market has been a serious driver behind the intent of policy reform. We have had simply to accept that, even in the past 10 years, the market has developed at a considerable pace and the situation is far removed from the one that the Licensing (Scotland) Act 1976 was designed to deal with. The reforms that have been proposed are designed to take account of the fact that the market will develop further in the next 10 years in ways that you and I can only guess at.

Mr Davidson: You were talking about the rolling three-year assessment with regard to overprovision, but all premises will be labelled simply “licensed premises”, whether they are off-licences, hotels or any of the variations that Bruce Crawford talked about. What happens if someone sees a market opportunity and the licensing board has not gone as far as reviewing what it considers to be the requirements in that area? Will there be a series of legal challenges about how the system operates? Is the bill going to be a licence for lawyers to make money? Will it allow new ideas to come in? You seem to be favouring a reasonably open-market situation in order to allow products to evolve. As the Justice 2 Committee did, however, I see all sorts of hazards arising from the lack of clarity. Are we going to tie up the boards and the courts in all sorts of arguments about whether something should be provided? You have not covered that.

Tavish Scott: That is a fair question. I might get Jacqueline Conlan to deal with the aspect that requires a slightly legalistic approach, however. In relation to that sort of situation, our presumption is very much that things be open. I do not believe that the bill would constrain that kind of market development. Obviously, a licence application in an area will have to comply with the national and local licensing board conditions. John St Clair might want to add something.

Mr Davidson: Before you bring in your colleagues, minister, will you clarify for me how much influence and control the national forum will have over the will and freedom of a local board?

Tavish Scott: Questions about the right balance between such structures arise in every sphere of government. I see that the trade has said in evidence to you that it would try its best to achieve a degree of national consistency on the important principles and conditions of licensing. Many licensing boards have said that to me as well. The national forum must ensure that we have such consistency. However, as in many areas of government, there should be local interpretation to suit local circumstances. The Glasgow situation is not the same as the situation in a village in your part of Scotland, Mr Davidson. I will ask John St Clair to deal with the point about our presumption.

John St Clair (Scottish Executive Legal and Parliamentary Services): We were aware of the question of overprovision and we drafted section 7(1) carefully so that the local licensing board would consider overprovision of licensed premises in general or—and this may be the key to answering your question—“licensed premises of a particular description”.

The board will therefore assess the various categories.

Because of the changing circumstances that members have all acknowledged, we have not included numbers for different types of licences. The formulation that we have used for section 7(1) allows boards to select the types of licensed premises that concern them. However, boards can also be subject to central guidance from the national licensing forum. For example, we might want to send a signal from the centre about how boards should go about dealing with overprovision.

The Convener: Can a board choose to consider licences not by type but only by number? If a board in a particular part of Scotland chose to do that, would we be drifting away from the idea of national consistency?

John St Clair: We cannot conceive of a situation in which the guidance, backed up with the provision in section 7(1), will not compel boards to consider different categories of licensed premises. Things may change over time as the national licensing forum feeds its guidance and advice into the various licensing boards.

The Convener: There is a proposal to remove the renewal date for licences. That date can be a focal point for objectors, who are often residents suffering the consequences of behaviour around particular premises. I accept that you may well tell me that licensing standards officers and the police would draw a licensing board’s attention to premises that were a particular problem, but is there a danger that residents will regard the loss of the focal point as the loss of the opportunity to make concerted representations to the board?

Tavish Scott: That point was made to me when I met the licensing board in Perth, but 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.

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.

The Convener: I will bring Bruce Crawford in on the issue of children and their access to licensed premises.

Bruce Crawford: I will address issues of the drinking culture in general before I bore down into issues about children.

We received some fascinating evidence a couple of weeks ago from the chief medical officer. He told us about the experience in Scandinavia, where Governments have opted for a price hike and restricted licensing to try to control a situation similar to that in Scotland in respect of the number of people who abuse alcohol. The comparison was made with what happens in the Mediterranean countries—in particular Spain and Portugal—where attitudes are much more laissez-faire. Those countries do not have the same restrictions on price or licensing, yet alcohol abuse does not happen to the same degree as it does here or in Scandinavian countries.

I want to consider those issues, because whatever we do in the bill will not by itself change the culture, although we can start to adjust small things. A common concern that has been raised with me is the perception that the bill will open up Scotland to 24-hour drinking. How do you think that the new licensing provisions will affect culture in that context? I will come back specifically to the issue of children, but I would appreciate a general answer on the culture issue first.

Tavish Scott: 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.

I accept Bruce Crawford’s contention about culture and the importance of tackling long-held attitudes to alcohol. Mr Sheridan also made a fair point in that regard. I accept that challenge, although we all know from our own parts of Scotland that it is a big one.

I am interested in Mr Crawford’s comments about Scandinavia—my part of Scotland has very strong links with Scandinavia. I recognise the significant differences in approach towards young people and alcohol in different parts of Europe. I do not know that we have got the approach right here yet, but by definition that is not easy—not least because some aspects of the question relate not only to culture, but to climate. Mediterranean society takes a different approach, which has been built up not over decades but over very long periods. I am sorry to meander. On the central point, there is a presumption in the bill against 24-hour drinking.

Bruce Crawford: Evidence has been led to the committee that having more family-friendly establishments would improve the culture, so licensees should be required to opt out of, rather than opt in to, having children on the premises. Premises that want to be adult only should prove that is the appropriate licence.

Tavish Scott: That is a judgment call. We want to ensure that premises are suitable for children and have the appropriate facilities. I know that the committee has received evidence about the facilities that should be available in premises that opt in. The judgment call is that having an opt-in process 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 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.

Bruce Crawford: Can I just burrow down into that a bit more, minister? You gave the reasons why you chose that option, but you did not talk about why the system would not work the other way around, with an opt-out process rather than an opt-in process. In what ways would an opt-out process not fulfil the objectives and principles that are outlined in the bill? I am struggling to grasp where you are coming from on that point.

14:45

Tavish Scott: I am sure that Mr Crawford will accept that 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.

Margaret Smith (Edinburgh West) (LD): I have a question on the selling of alcohol to children, particularly from off-licences, which is a matter of concern throughout the country. A number of the submissions that we have received comment on the lack of a procedure for test purchasing as a means of monitoring the sale of alcohol to children, particularly from off-sales outlets. Bearing in mind that there has been a recent policy change from the Lord Advocate in relation to the use of children in test purchasing of cigarettes, why are you not going down the same route?

Tavish Scott: That is a fair question. 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.

Margaret Smith: Can I take it that you will welcome the committee’s view on that issue?

Tavish Scott: I would certainly welcome your view, yes.

The Convener: I do not know whether Michael McMahon wants to ask a question that he raised with several witnesses about a concern that arose in Lanarkshire recently.

Michael McMahon (Hamilton North and Bellshill) (Lab): I asked everyone else about it, so I should probably ask the minister, too. As you might know, minister, I have been approached by the police in my area about their major concerns on the dial-a-drink development. Have you had an opportunity to look into the matter? Can you shed any light on the provisions that would be required in the bill to address the concerns that the police are raising with me?

The Convener: In case you have not seen the detail on the matter, minister, I point out that Michael McMahon has raised the issue that there is no requirement on delivery drivers from such services to require proof of age.

Tavish Scott: That is a fair point. It is a worrying issue, which Jacqueline Conlan and the bill team have had a good look at. The problem is finding a mechanism in law to deal with it. My understanding is that certain supermarket chains already have codes of practice and helpful rules, regulations or company policies on the matter and I am sympathetic to that.

I do not want to be in any way flippant about the matter, but there are some tricky questions. 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. We recognise the problem and if the committee comes up with a solution I will be delighted to look at it. We will be genuinely interested in any recommendations that you care to make. Our lawyers have been poring over the problem, but it has not proved easy to solve.

Michael McMahon: As the police are aware of the issue and know the concerns that they will have to deal with, has any discussion taken place with either the Association of Chief Police Officers in Scotland or any of the other relevant organisations?

Tavish Scott: I will meet ACPOS shortly and will discuss the matter with it.

Jacqueline Conlan (Scottish Executive Finance and Central Services Department): 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. I believe that Malcolm Dickson said that in his evidence to you. That is something that we need to look at; we just do not know whether we can find a workable, practical solution.

Bruce Crawford: My next question is on the general culture of drinking. It has been put to me that many people would rather that their 17-year-old was in a pub having a drink of beer than in the local park slugging away at a flagon of cider that they had procured from a supermarket or wherever. In Holland, the law allows 17-year-olds to drink beer under 5 per cent proof in bars. That might be seen to be a more effective way of trying to educate young people to behave in an appropriate way. I do not know whether the Executive has had the chance to examine the situation in Holland, which has a climate that is similar to Scotland’s, or to consider whether such an approach might help us to change the culture and the way that drinking is regarded in Scotland.

Tavish Scott: There is no restriction on underage people drinking at home; the responsibility in that area lies with the parents. The example of cider being consumed in the park probably raises that issue as well as other issues.
We have not considered the Dutch example and there are no proposals to change the legal age for the consumption of alcohol, so I cannot give Bruce Crawford a particularly good answer to his question.

The longer-term perspectives and the attitudinal and cultural issues are extremely pertinent. If we were to send out any kind of signal that we were making it easier for younger people to access alcohol, that would not be particularly consistent with what we are trying to do overall. If we could be confident that such action would pay dividends quickly, we might be prepared to consider it, as might any Administration. However, all the evidence on underage drinking is pretty worrying, as the committee knows. We must try to deal with where we are at the moment in relation to the proposals.

Jacqueline Conlan: The bill contains a provision that continues the position under the 1976 act, which allows 16 and 17-year-olds to consume certain types of alcohol in a pub with a meal. If they are having a meal, they can have beer and cider.

Bruce Crawford: The Dutch position would not be a big extension of that provision.

Mr Davidson: The minister has talked about taking advice from different departments on the legal position. I presume that he will have to take account of the situation with regard to internet purchasing and mail order through a wine club that might advertise in The Sunday Times or the Sunday Post. Many such items are delivered either by the Post Office or by hauliers during working hours, which often means that they are received by underage people who are the only people at home. Will the minister look into that and clarify the position on it in writing to the committee?

Tavish Scott: That is one of the issues that we face in relation to the question that Michael McMahon asked. I am sure that the Royal Mail delivers many boxes to Mr Davidson’s house, as it does to mine. There is sometimes no illustration on the packaging, so how would a 14-year-old daughter know what was in the box as she signed the receipt? All that I can say is that, yes, that is exactly the kind of issue that we have been toiling with.

Tommy Sheridan: The Executive has made the point that the bill represents the biggest shake-up of licensing law for 30 years—a major shift is being made in an attempt to achieve the stated objectives. However, I think that, overall, the committee has been disappointed, as an opportunity has been missed in relation to the regulation of off-sales. Why does the bill not cover stricter regulation of off-sales?

Tavish Scott: As the minister sponsoring the bill, I have made it clear time and again that I would be more than happy to consider evidence about off-sales. We have met representatives of that section of the trade. If the committee makes particular recommendations in that area, I will consider them. I have met a range of people, groups and trade representatives, as well as local people in different communities who believe that we should go further on the matter.

I am sure that Mr Sheridan is not suggesting that no measures in the bill relate to off-sales; in fact, the bill contains a considerable number of measures on them. Off-sales premises are licensed premises, like others. They will have to follow, for example, the no-proof, no-sale position. I hope that Mr Sheridan will acknowledge that important measure. I would not wish it to be suggested that we have done nothing on the matter. The reverse is true: we have moved forward considerably. If the committee has thoughts about particular measures, I will be more than happy to consider them.

Tommy Sheridan: Would the minister be willing to consider statutory powers in relation to a minimum pricing policy at off-sales? The committee has been concerned about the matter. We received evidence from police chiefs and others who said that groups of youngsters will pool their money on Friday and Saturday nights and will buy as much booze as they can—their carry-out. If there was a minimum pricing policy and less irresponsible promotion by off-sales, we might be able to curtail that supply in some way, although I know that we cannot stop it. Would the minister consider that?

Tavish Scott: 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. I am sure that Mr Sheridan will be familiar with that. 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.

There is no lack of will on this side of the table to tackle the issue and I would not want there to be any suggestion to the contrary. It is the nature of this job to find ways in which to achieve our policy objectives. It would be great to use a number of mechanisms, but we have weighted the one that we think is open to us under the law, according to the advice that we have received.

Tommy Sheridan: Will the minister comment on the difference between the Perth and Kinross scheme and the Aberdeen scheme, to which he is referring when he mentions a challenge in court?
Our evidence is that Perth and Kinross Council had a minimum pricing scheme, which, according to the Office of Fair Trading, did not contravene competition law. Although there has been no detailed analysis, all the anecdotal evidence is that the scheme there was very successful. Is it worth re-examining the matter?

**Tavish Scott:** I will get Jacqueline Conlan to answer that in detail in a moment, but I discussed the matter with Perth and Kinross Council's licensing board when I visited the area a couple of months ago. We might have looked at the matter more closely if we thought that we could pursue that approach. However, the advice that we received was that we could not.

**Jacqueline Conlan:** I am not sure, but I think that Perth and Kinross Council has withdrawn its scheme following the decision to withdraw the scheme in Aberdeen. The advice is that minimum pricing is not feasible under the terms of the Licensing (Scotland) Act 1976. We considered minimum pricing and non-differential pricing, which is covered by the bill. There were issues around the decisions taken with respect to the 1976 act, but it would be fair to say that there were wider considerations as to whether minimum pricing or non-differential pricing was the best option.

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.

15:00

**Tommy Sheridan:** Are you happy that non-differential pricing will allow you to regulate off-sales and prevent irresponsible promotions in that sector as well? On the Perth and Kinross scheme, there seems to be a problem. The scheme was investigated by the OFT, which found that it was not contravening competition law. That gives us one decision for and one against, which is not much evidence on which to base a decision against minimum pricing.

**Jacqueline Conlan:** The people who were involved in the Perth and Kinross scheme received advice from the OFT that they could run it, but the Scottish courts have since ruled differently on the Aberdeen scheme. There were differences between the schemes and it is not for us to comment on the court’s decisions, but Perth and Kinross Council seems to have taken the view that it would rather withdraw the scheme than risk being challenged. I refer you to the minister on the point about off-sales.

**Tavish Scott:** 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.

**The Convener:** Given that the purchase of alcohol on behalf of young people is illegal, the only evidence base for the link would be the relatively small number of people who are prosecuted for the sale of alcohol to a minor or the purchase of alcohol on behalf of a minor, so it would be pretty difficult to get conclusive proof that off-sales contribute to binge drinking among young people.

However, I suggest that it is pretty much common sense that the largest proportion of the alcohol that young people consume will have been purchased from off-sales as opposed to on-sales, because it is easier for them to get access to that alcohol without having to make the purchase themselves and evade the proof-of-age requirements that would apply in an on-sales environment.

In addition, we have all seen promotions in off-sales environments that clearly sell alcohol at well below its cost price. As Mr Sheridan said, young people have limited budgets and are more likely to go for the maximum amount of alcohol that they can buy for that limited budget. That is a commonsense issue that needs to be addressed.

**Tavish Scott:** I have a lot of sympathy with that point, which is why I am determined to retain the powers to act on the matter. There is a lot in that commonsense argument, but we have to put our position together in a number of ways. We would be happy to reflect on the committee’s thoughts and findings in that area.

**Tommy Sheridan:** I read in a document—I think that it was in the policy memorandum, but I stand to be corrected as I do not have the document with me—that the only evidence that we had about young people was that the largest amount of alcohol that they accessed and consumed was...
from off-sales. That was the only research that we had, but if lots of other research says something different, that is fine.

The idea that we have no evidence is unacceptable. The overwhelming weight of evidence that the committee has heard suggests that off-sales are one of the most problematic aspects of alcohol purchase in the licensed trade. That is why it is disappointing that the regulations are not firmer. If you are saying that the Executive is willing to examine the matter and that, if the committee makes a strong recommendation, you will consider it seriously, that is great. I hope that you will be open-minded.

Tavish Scott: I am open-minded on the issue, about which I am genuinely concerned. There is much in the arguments that committee members make. We will strongly and carefully consider the committee’s findings.

The committee is right that protecting children is a strong principle of the bill, so the commonsense argument that has been made is persuasive. I will read the committee’s report when it is published.

The Convener: Tommy Sheridan was right in his reference to the policy memorandum, which cites evidence that one third of young people have purchased alcohol from licensed outlets. I accept that the proof-of-age scheme may affect that, but the evidence is as Tommy Sheridan suggests.

Margaret Smith: I do not want to labour the point and I probably do not require a response from the minister. When we heard evidence from Executive officials, we were told about the lack of evidence and advised that the Executive was pursuing more evidence. At that time, I said that some of what is in paragraph 8 of schedule 3 could apply to off-sales without further evidence. I refer the minister to paragraph 8(3), which says:

“A drinks promotion is irresponsible if it ... relates specifically to an alcoholic drink likely to appeal ... to persons under the age of 18”

or

“is based on the strength of any alcohol”

or

“offers alcohol as a reward or prize”.

Those provisions do not refer directly to binge drinking, but by applying them to off-sales we would err on the side of saying clearly in the bill that we are concerned about what is happening in off-sales.

Adding provisions to deal with off-sales would cover some, but not all, of the concerns that Mr Sheridan highlighted. We all know that our communities feel under threat from what goes on in and around off-licences, which usually involves many young people. If we do not deal with that in the bill, that will be a lost opportunity. I accept that the minister might want to examine other evidence, but I ask him seriously to consider whether such off-sales issues could be dealt with in the bill, irrespective of further evidence.

Tavish Scott: May I reflect on that? As I said, I am open-minded about the matter. The suggestions are helpful. We will examine closely the committee’s recommendations.

Bruce Crawford: We have received from the Scottish Grocers Federation interesting evidence that begins to tease out what it considers to be some of the statistics—I will not comment on how robust some of them are. The federation claims:

“the total percentage of alcohol sales on promotion is only 1.78% of the total over a three month period by volume”,

which suggests that such sales are not large. It also says:

“We believe that the Scottish Executive should resist all attempts to control the way we promote and market the goods on our shelves.”

Interestingly, the federation goes on to qualify that by stating:

“We are relaxed about a proposed minimum period for promoting alcohol products and would be happy to see a minimum period of 72 hours and we are also relaxed about controls on the packaging, whereby an extra 25% free is no longer permissible.”

On the one hand the federation states that it does not want controls, while on the other hand it says that it is prepared to accept some. The submission is slightly contradictory, but nevertheless there is some hope in it for potential discussions.

The federation also states:

“We understand the Scottish Executive Licensing Team is commissioning research into the effects of off-trade promotions.”

If that research exists, how far is it from publication? Obviously, that would add to the evidence that the committee has and would help us decide what suggestions to make to improve the bill.

I have one more small point. Would the simple measure of allowing only off-licence premises managers or personal licence holders to sell alcohol from off-licences introduce a level of restriction? Such a measure might go some way to controlling the flow of alcohol that finds its way into underage hands.

Tavish Scott: I am not sure that that measure would necessarily help. Many of the practical aspects will be covered by the operating plans; that is appropriate, although there must be a degree of consistency in the plans.

Jacqueline Conlan will deal with the question on the research—she knows about it—but on the
statistics that Bruce Crawford mentioned, my only point is that it is extremely helpful to have them on the record.

Jacqueline Conlan: The research is at an early stage. I have had two or three meetings with Alcohol Focus Scotland and researchers from the Scottish Executive to consider what kind of research we might be able to do. At present, the Scottish Association of Alcohol Action Teams is undertaking a study, the report of which will be produced by the end of June. We would have done that work anyway, because it is a useful desk study of the available evidence to find out how much of it hangs together. As the study may be informative, we agreed to decide at the end of June whether we could plug further gaps in our knowledge with research. Obviously, issues arise about whether any research that we conduct can reach sensible conclusions. For example, we must decide whether we can formulate research that will provide evidence about consumption, rather than just purchasing. We are actively considering research, but we will use the study that will report at the end of June, which we are not conducting. If we commissioned additional research, I do not think that it would produce results during the bill's passage.

Tavish Scott: I will add one point in relation to points that were raised by Margaret Smith and other members—John St Clair has just jogged my memory. Where there are legitimate issues about the number of off-licences, the process of assessment of overprovision will help. I can only speculate what the effect on prices might be, but if a local licensing board found, after careful consideration, that there was overprovision of off-licences in a particular area and took a decision on the numbers, that might have an impact on prices.

Jacqueline Conlan: The bill seeks powers that will enable us to extend the licence conditions that exist for on-sales to off-sales. The intention is that that should be done under the affirmative resolution procedure. Therefore, there would be parliamentary scrutiny of the results of any research.

15:15

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I want to return to the minimum pricing schemes. We are advised by a Scottish Parliament information centre paper with which we have just been supplied that the Perth and Kinross scheme was introduced in October 2002. Anecdotal evidence suggests that the scheme was a success—it created a culture change and tackled problems of alcohol-related disturbance and disorder, which are serious problems for every city-centre dweller who is exposed to them. The scheme involved the setting of minimum pricing conditions. The minimum price for draught beers, lagers and stouts was £1.50, and for spirits it was £1.00 for 25ml. Minimum prices were also set for wine, alcopops and jugs of cocktails.

The scheme was said to have been successful, but as Jacqueline Conlan pointed out, it is no longer in operation. The paper from SPICe tells us that it ended in November 2004, perhaps as a result of the successful action for judicial review in the Court of Session that Mitchells and Butlers Retail and the Spirit Group raised in relation to a similar scheme in Aberdeen. I have not had the benefit of studying Lord Mackay's opinion, but the paper suggests that his decision might have been made on the narrow ground that the Licensing (Scotland) Act 1976 does not provide the powers to introduce such schemes. If that is so, I query Jacqueline Conlan's response to Mr Sheridan, when she seemed to say that the matter was for the courts. I respectfully suggest that the courts interpret the law, but it is the Parliament's duty to make the law. The bill presents us with an opportunity to make the law and learn from Lord Mackay's judgment, by including permissive provisions to allow minimum pricing schemes and put them on a proper statutory footing.

The note from SPICe quotes Lord Mackay, who said that a licensing board

"might well take the view that adopting a policy of requiring that alcohol be sold in accordance with a minimum price tariff could prevent binge drinking."

We might well take that view, which might well be the experience of Perth and Kinross licensing board—it might have been useful to hear a little more from the board.

Lord Mackay went on to say:

"The board would, in my opinion, be acting outwith its statutory powers, and thus unlawfully, if it adopted and sought to impose a requirement that licence holders sold alcohol at or above minimum prices which the board had itself fixed."

Lord Mackay's opinion seems to be based not on the judgment of the Office of Fair Trading, which—from what we can gather—reached the opposite conclusion, but on the narrow confines of the powers in the 1976 act to deal with drunkenness.

I am neither a critic nor a particular advocate of minimum pricing schemes, but given that we will not legislate on licensing every year, it would be useful if the minister could give further consideration to the matter, because if such schemes have a successful track record in tackling city-centre civil disturbance and disorder—more information could be sought to ascertain whether they do—I hope that, with hindsight, we will not regard the bill as a missed opportunity to address the matter. I am sorry to have gone on at unusual length, but I have been
listening attentively thus far and I thought that I would take my chance.

The Convener: You could have omitted the word “unusual” from your final sentence.

Tavish Scott: I will try to be brief. First, on the premise of Mr Ewing’s question, the Perth and Kinross scheme ran for a short time. I do not suggest that Mr Ewing is exaggerating the case, but I think that we have all tried to address the fact that we cannot attribute massive cultural change—

Fergus Ewing: The scheme ran for two years.

Tavish Scott: Yes, but I honestly do not think that it is possible to say, “The bill will change Scotland’s attitudes to drinking in two years”—I have never made such a statement, as I hope that Mr Ewing will acknowledge. We should not suggest that a single mechanism, which was in place for a short time, could change the way in which things happen or the manner in which an area is policed. I went to Perth and Kinross and asked many questions about the scheme and genuinely tried to learn about it, but I do not think that the issues in relation to disorder in the city centre related just to the scheme; an awful lot of other good work was undertaken, which involved working in collaboration with agencies, the police and the trade. I was impressed by the work that the licensing board did and with all the associated activity, which sends a strong message to every licensing board and area.

On the precise question of why we have not opted for minimum pricing, I certainly do not want to get into second-guessing legal judgments and interpretations, but our approach of non-differential pricing is less invasive as it does not require each licensing board to set prices in a drinks tariff. I can only speculate what the front page of the Inverness Courier might look like on the day that such a drinks tariff was set. I dare say that the paper might reflect the views of many people. Minimum pricing would—to put it no stronger—be difficult. It would also ensure that we had an entirely inconsistent approach across the country.

For many reasons, but chiefly for the two that I have given, we decided that the minimum pricing approach was not the best one. Although that approach seemed to work in Perth and Kinross for a short period, I stress that the minimum pricing policy was not the only factor, as there were a range of other interagency activities to tackle what we all agree are important issues that need to be addressed. However, we need to make a judgment call about how best to tackle those issues. That is why we have gone down the route that we have chosen.

The Convener: I will allow two further points to be raised by Sylvia Jackson and Bruce Crawford, but we must then move on to other issues.

Dr Sylvia Jackson (Stirling) (Lab): On the issue of underage drinking, I support what Tommy Sheridan said. I have reread the policy memorandum’s section “Under-age drinking”, which was practically the first section of the document that I read. The link with small licensed grocer shops is clearly stated as one finding from the large-scale, longitudinal research that ministers commissioned from the Scottish Executive central research unit. The policy memorandum says nothing about further research being needed. Indeed, one bullet point states:

“the study has also found that the purchasing of alcohol, as distinct from frequency of drinking, is strongly related to delinquent behaviour.”

All these issues are linked. The policy memorandum could not be clearer on that point.

Tavish Scott: I accept that point absolutely, but the issue is not just about children. Sylvia Jackson is entirely right about the evidence on where children purchase alcohol. The protection of children should be an important principle of the bill, and I am sure that all MSPs share that objective. I am listening to what she says—I am hearing her loud and clear, as we say in my part of the world—but I must also have regard to the impact that such measures would have on other customers over 18 who legitimately buy alcohol in off-licences. However, I hear what she says about children. We will take back that point and we will reflect on what the committee says.

The Convener: After Bruce Crawford’s question, I will allow one further brief question to Tommy Sheridan, who started off this line of questioning.

Bruce Crawford: Jacqueline Conlan mentioned the potential for some kind of affirmative instrument at a later date. Does the minister accept that such a process would put Parliament and the committee at a slight disadvantage, in that we would neither be able to take further evidence on the research that the Executive has commissioned nor have the chance to go into such detail on the regulatory changes that could be applied to the off-licence sector?

Is there any way in which the work that has been commissioned could be fast-tracked to allow the committee access to the research before we get to stage 2? I have not had the chance to discuss this with my committee colleagues, but I wonder whether perhaps we need a supplementary evidence-taking session to examine that research so that we can get some measure on the face of the bill rather than rely on it being introduced by an affirmative instrument. Given the issue’s importance, which the minister has rightly recognised, I am not sure that dealing with the matter by affirmative instrument at a later date is the most appropriate way forward.
Tavish Scott: My understanding is that such research cannot be moved up suddenly just like that, so I will not pretend otherwise. It would be misleading of me to say that I could do something when I am not sure that I can. All that I can say is that, again, I absolutely hear what the committee is saying on this subject and we will reflect on it.

Tommy Sheridan: I have three questions. I apologise for having to leave early again—the convener knows that I am going to a parentcraft class.

Sylvia Jackson has done us a service by reminding us of the starkness of the evidence and the bill’s objectives with respect to underage drinking. I hope that the minister cares less about general services for over-18s and more about homing in on an area in which we may be able to restrict the supply of alcohol to underage drinkers.

First, minister, have you considered statutory health warnings or alcohol concentration warnings on alcohol products to assist the public? Secondly, in the light of evidence that we have heard about the easy availability of lager with bread, for example, have you thought more about the desirability of prescribing how alcohol—given its dangers—is sold in supermarkets? There could be specific tills in specific areas so that there is not a laissez-faire attitude and lager and eggs are not looked on as the same kind of things that can be bought together.

Finally, on section 86(4), will you please confirm that you will withdraw the right of licence holders to “use reasonable force”, given that the evidence that we have received so far is that that would be a dangerous road to go down?

Tavish Scott: John St Clair is a lawyer and can deal with the issue of reasonable force. I cannot give the answer that Mr Sheridan wants. We have adopted our position for fairly strong reasons.

I will deal with the first two questions in reverse order. Mr Sheridan may be familiar with the expert group’s recommendation on shelf displays. 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.

Labelling and advertising are reserved matters—I am sorry if that is a wee bit of a cop-out—but I assure Mr Sheridan that 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.

I invite John St Clair to deal with the question about reasonable force.

John St Clair: We are slightly puzzled by Tommy Sheridan’s question, as 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.

Tommy Sheridan: I am sure that Sheriff Principal Nicholson was aware of what was in the previous legislation and he said that that right is wrong.

John St Clair: I do not want to comment on his thinking, which he would have to explain to us in detail. I have described our rationale and my reading of the previous legislation.

The Convener: Leaving aside Tommy Sheridan’s concern about how reasonable force will be defined, it seems to me that there is a danger that there might be an imperative for licensees to move trouble away from their premises rather than deal with it. They might move trouble out on to the street and not bring it to the attention of the police because it would constitute a black mark against them. That might increase the danger of serious and violent assaults, because violent behaviour would not be drawn to the attention of the police. What is your response to that?

15:30

John St Clair: I concur with that. We do not want to be in a position in which the responsible person dodges all responsibility by shoving the problem out on to the street. There is common law on how responsible that person is for acts that are committed within the ambit of his pub. I do not want to go into that today, but we are happy to write to the committee on the matter. It is a tricky area.

Tavish Scott: About a month ago, I spent a Friday night in Glasgow city centre with Strathclyde police. Between the early stage of the evening and 3 am, when many people leave nightclubs, the two sergeants who were taking us around showed us a video of precisely that type of incident, which was caught on closed-circuit television. A male who had drunk a considerable quantity of alcohol was ejected from an
establishment in central Glasgow. As far as I remember, the licence holder was hauled over the coals by the licensing board in relation to his activities and particularly those of his staff. No harm came to the gentleman who was ejected and in some ways it was reassuring to see that two young girls helped him and phoned the police—apparently, he was safely taken home. The point that members have raised is a serious one and we must have regard to it, but there is nothing to stop proper reviews, operating plan assessments and so on in that area.

Paul Martin (Glasgow Springburn) (Lab): My question is separate from the issue that we have been discussing, but it is related to the violence that erupts from premises. We took some evidence, particularly in Glasgow, about the consequences for local communities and the need for additional policing or environmental services such as cleansing. Some witnesses have argued that we should put in place a fee system whereby applicants are expected to pick up the cost of the additional resources that are required. Should we put in place a fee system to allow for that?

Tavish Scott: We do not propose such a system, although there is certainly an argument for one. There are two points to be made. First, owners of licensed premises would argue that they already pay taxes—both business rates and other forms of business taxation—for the delivery of local public services. Secondly, as I am sure Mr Martin is aware, 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. That support is important, because this is such an important area and—I say this in fairness to Fergus Ewing—we are going to deliver the reforms only once: we will not revisit the legislation in every session of Parliament. We have not looked at the area that Paul Martin mentions, but I understand the argument.

Paul Martin: The expenditure has to be picked up somewhere and, in effect, it is being picked up by the local authority rather than the licence holder, as the licence holder passes on responsibility for covering the cost of the additional resources that are required. Whether those resources are provided by the police authority or the council, it is the council tax payer and the taxpayer who has to pay for them. I am not talking about all licensed premises, but substantial premises, such as superpubs, will require services that are additional to those that are currently provided. There must be some scope for us to consider amending the bill at stage 2 to allow local authorities to be given the power to set in place a fee structure so that, as part of the licence conditions, licence holders would have to meet the cost of additional CCTV systems, cleansing services and police, for example.

The Convener: I have a supplementary to Mr Martin’s question. As things stand at the moment, a local authority’s sole method of addressing the sort of problem that Paul Martin raises is to withdraw the licence, which would represent a bigger loss of income to the licence holder than would be incurred by a requirement on them to contribute towards the cost of reducing any behaviour that took place outside the premises and caused concern to local residents.

Tavish Scott: There are two issues. First, by definition, the withdrawal of the licence would be one heck of a curtailment of activity. Secondly, I hope that Mr Martin is comforted by the fact that licensing boards can include in the licence conditions of very large drinking establishments such as superpubs—I understand that they are now called vertical drinking establishments, which I presume to mean that they do not have any seats—a requirement to install CCTV, for example. That means that we and local licensing boards can ensure that such premises have an extra degree of security. Other appropriate measures include door stewarding. We need to have a balance between allowing such premises to be managed responsibly and in such a way that any potential for public disorder is derailed and placing an onus on them in that regard. I guess that the licensing regime is designed to create the conditions that allow that to happen.

Paul Martin: So you will be sending some cheques to Strathclyde police.

Tavish Scott: I write cheques to Strathclyde police under another line.

Fergus Ewing: I want to pursue a related point. Neither I nor the Scottish National Party would argue that licensed premises should have heaped on them other taxes, fines, fees or costs. It is germane to point out that, at present, they contribute fairly heavily to local government finance by paying their allotted share through the non-domestic rating system. I raised with a witness at a previous meeting—I think that he was from the Scottish Licensed Trade Association—the related issue of those premises that do not pay business rates, which might therefore be said to sponge off those that do.

I mention the issue because in Inverness and Fort William there were some well-publicised cases of licensed premises that operated as limited companies, went bust, re-established themselves as other limited companies, went bust...
again and paid no business rates. Businesses that pay their taxes look on such companies as competitors that flout the law in respect of payment of business rates. I raised the issue quite early on. I am not saying that there are easy solutions, as was acknowledged in the reply that I received from the witness; I am aware of the legal difficulties.

I ask the minister to give further consideration to what is a serious problem before we move on to stage 2. I have encountered it in my work as a solicitor over the years and it is frequently associated with a small minority in the licensed trade. A large number of limited companies go bust, do not pay their taxes and leave unpaid business rates bills, usually for five or six-figure sums. It would be worth while obtaining an answer to why it is that, in some cases, local authorities have not recovered that money. The answer may relate to company law or to other reserved legislation, but I suspect that there are things that we could do to ensure that those who do not pay are not penalising those who do pay—and pay fairly heavily.

Tavish Scott: Mr Ewing would accept that the problem is not confined to the licensed trade. Business failures and the collection of overdue or unpaid tax are reserved matters. However, he can be assured that we are considering what we can do.

To some extent, Mr Ewing’s question reflects the competitive nature of the industry. It is highly competitive and business failures will occur; the overview of licensing boards and the licensing forum will be important in gathering such information.

To pick up on what Mr Ewing said at the start, I want Scotland to have a strong and vibrant hospitality industry. Scotland needs that, whether in Mr Ewing’s part of Scotland, in mine or in the convener’s. We need an attractive club, pub and cafe society that Scots and visitors can all enjoy. If I remember rightly, the committee heard evidence from the chairman of the Edinburgh licensing board, who made the point that Mr Crawford raises. 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. Bruce Crawford may press me on the meaning of “local” but—and without wishing to be flippant—I genuinely believe that the process should be inclusive rather than exclusive. That is why we have designed it as we have done.

Bruce Crawford: I will not press you on the word “local”, but I will ask you to consider the wording in the Gambling Act 2005, which has just been passed at Westminster. Section 158 defines interested parties in relation to objections. An interested party could be a person who “lives sufficiently close to the premises to be likely to be affected by the authorised activities” or who “has business interests that might be affected by the authorised activities”.

That wording does not prescribe a distance; for example, it does not say that a person must live within 50m of the premises. It therefore allows some flexibility. I do not expect you to accept today that such a form of words would be appropriate, but will you consider it as offering a way of making progress?

In evidence to the committee, the question arose whether the police or the local authority should have a right to object. You will have seen the evidence concerning the police. Have you reconsidered the issue?

15:45

Tavish Scott: As for police objections, we will meet ACPOS shortly, as I said—I think that the meeting is in the next couple of weeks—and we will consider that matter. I am aware of the evidence. That is a significant point, which has been made well in the evidence to the committee.

I cannot give Mr Crawford much comfort on his first point. The Civic Government (Scotland) Act 1982 has been on the statute book for a long time. It has operated without a geographic restriction or
any other curtailment on representations or observations that individuals, bodies, local communities or whoever may wish to make. I understand the concerns, but I honestly do not believe that the system will get bogged down. I am not minded to go down the route of closing the options down when, entirely reasonably, many representations made to the consultations on the bill and on other occasions wanted the system to operate in the way that we have proposed. Forgive me, but I cannot agree with Mr Crawford on that point.

Bruce Crawford: I did not say what my view was; I just asked the question.

Tavish Scott: I apologise.

The Convener: I was particularly struck by the fact that Bruce Crawford quoted positively legislation that was recently passed at Westminster.

Tavish Scott: Far be it from me to comment.

Bruce Crawford: Obviously, I would much rather that we were legislating in the Scottish Parliament, but I have to face some realities in the short term.

The Convener: Define “short term”.

Margaret Smith: I will pick up on Bruce Crawford’s comments. For a time, I served on a licensing board in Edinburgh. The minister knows that I have raised concerns with him about what is at least perceived to be—and I think is—a reduced level of police input to the licensing process under the bill.

We have had discussions about people ejecting others on to the street and the minister has put on the record today comments about the implications for the licence holder—they might be hauled over the coals, for example. To limit the police to only having the right to comment about relevant convictions would not give them the opportunity to make the most of their breadth of knowledge in making an input. When I was a member of the licensing board, I found it useful for the police not only to be able to input information about when things had gone wrong but sometimes to input information when things had gone right. For example, they could point out that there had been a disturbance at a licensed premises but that they felt that the licence holder had dealt with it responsibly and had trained their staff on the door to act responsibly. The police brought to the table that kind of broader information.

I seek reassurance that the minister is seriously considering enabling the police to continue with that wider role so that they can, based on their experience, express their general concerns about an individual who applies for a licence, make positive comments about an individual or comment on the funding of a project when they feel that the funds might come from laundered money, for example. The police have access to lots of information that can be particularly relevant in relation to licensed premises. I seek reassurance from the minister that we will not limit the police to commenting on relevant convictions only.

Tavish Scott: If the issue was as serious as laundered money, I presume that the police would take the case to the fiscal.

It is important to point out that the restriction on the police applies only to the application. For the rest of the time, they can very much be involved in the process through making positive or negative observations, as Margaret Smith rightly describes. I assure her that we will meet ACPOS to discuss the matter fully and deal with those issues.

I hope that Margaret Smith will also accept that in the regime that will be in place—subject to the Parliament approving the bill—licensing standards officers will have a role. The work that they will do perhaps does not get done now or at the least will be considerably strengthened. They will have a role in liaising with various bodies, including the local forum. They will be able to show that they are close enough to the scene, to the trade and to the interested parties—not least of which are the police—to play what I hope will be a positive role.

I assure Margaret Smith that I will meet ACPOS representatives. However, it is important to recognise that the regime will change. The role of licensing standards officers will be important in the effective delivery of the measures that we propose in the bill.

Margaret Smith: ACPOS has expressed concern that there are no plans for a national database of personal licence holders and that that information will effectively remain with the licensing board that first gave the holder their licence. Will you comment on ACPOS’s concerns?

Tavish Scott: You are right that those concerns have been expressed, but quite a number of views on the issue have gone the other way. The matter requires a balanced judgment call and we have to make the right assessment. 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.

Paul Martin: The issue is not just about what the police want to report. The public need to be certain that licensed premises issues that they have raised are being reported to the licensing board. I amplify community concerns in my constituency and the evidence that the committee has received about what happens when people report incidents involving licensed premises. If a crime has not been detected, an incident may not
be reported to the board. Is there a need for police authorities to report consistently to the board and not to be selective about what they feel is relevant? For example, if the police have been called to a particular off-licence premises 110 times, that could be included in some kind of report to the board of incidents in which the police have not detected a crime but about which there are community concerns. My experience is that police do not always report such cases to the board.

Tavish Scott: I share Paul Martin’s disappointment. If I was a constituency member where that was happening I would be pretty worried about it, too. If Paul Martin wanted to furnish us with the details, I would be happy to consider that example and to discuss it with ministerial colleagues in the Justice Department. Those incidents should be coming through the system. In the useful discussion that I had with the Strathclyde officers, they explained that the logging of calls was important to them in building up a picture of particular licensed premises and that that information was shared with the appropriate licensing board. I would be happy to consider the specific example and ways in which we can tackle it.

Paul Martin: There is a need for a recognised format, in which a certain number of telephone calls about a premises leads to its being reported to the board. People will say that that is additional bureaucracy, but a community does not want to object to an application and be told that there is no report from Strathclyde police, when the police have in fact made repeated calls to that premises. Strathclyde police might confirm that they have made repeated calls to the premises, but the incidents have not necessarily been reported to the board. Is there a need for some kind of format?

Tavish Scott: Indeed. Under the bill, the LSO would have to provide a written report. That would be built into the construction of the new regime. I hope that cases in which there were 126 calls, for example, about a particular off-licence would be logged in the written report—that would therefore be a matter of record in relation to the proceedings of the licensing board. I hope that that would help to pick up the process. Through the bill, we are trying to put in place mechanisms—not least of which are the LSO measures—to tackle that kind of issue.

Margaret Smith: Who would direct the activities of the LSOs? Would it be the board, the local authority, the police, or, as the Law Society of Scotland suggested, a national body? Is the role of the LSOs sufficiently clearly defined? Do you accept that there is the potential for a degree of confusion with the police? I refer, for example, to the power that has been given to LSOs to enter unlicensed premises to check whether alcohol is being sold illegally.

Tavish Scott: We will consider the issue of the power of LSOs to enter unlicensed premises. 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. You asked about the job description. That will be worked on further, sharpened and, more to the point, published by the national licensing forum.

Margaret Smith: Do you have a timetable for when you expect the system to be in place?

Tavish Scott: As I said earlier, the members of the national licensing forum will be appointed this summer. They will have a number of things to get on with, but details such as the ones that we are discussing are important. I hope that the forum will make progress quickly. We will write to the committee with information on the precise timescale. I am sorry not to be able to give a more exact response.

The Convener: The next issue that I want to raise is perhaps a technical point, but it is important if it proves to be correct. Sheriff Principal Nicholson indicated to the committee that he believed that there could be a challenge to the bill under the European convention on human rights, on the basis that currently local authorities are licence holders and members of local authorities—councillors—were the people who made decisions on licences through licensing boards. He contended that a case could be made for viewing licensing boards as tribunals that were not impartial and that, consequently, under the Scotland Act 1998, the legislation as a whole could fall because it was not ECHR compliant. I am sure that you will have picked up that issue in the evidence that Sheriff Principal Nicholson gave to the committee. What is your response to the concern that he expressed?

Tavish Scott: 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 compatible. I assure you that we have checked the matter seriously and in considerable detail and do not have concerns about it. John St Clair may be able to provide the committee with further details of the process that was undertaken.

John St Clair: 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.

The Convener: We would find a fuller explanation useful. I am struck by two points. First, if local authorities were not licence holders, they would not have a potential conflict of interest and the councillors on licensing boards would be and would be seen to be impartial. That would be a relatively simple solution. The evidence that we have heard indicates that local authorities hold only a relatively small number of licences directly. Secondly, it is not long since the Executive required councillors no longer to be justices of the peace, and certainly not to sit on the bench, because that raised questions about their impartiality. Am I wrong in seeing a parallel between that situation and the situation of licensing boards?

John St Clair: There is a degree of analogy. However, the licensing board is more of an administrative body than a tribunal, which impacts on the general ECHR assessment. The House of Lords has made it clear that the existence of a judicial tier above an administrative body gives protection against a challenge under the ECHR.

The Convener: There are still a few areas of questioning that we want to pursue. It may be useful for us to have a five-minute break before reconvening.

Tavish Scott: That would be fabulous.

16:01
Meeting suspended.

16:07
On resuming—

The Convener: In the absence of the member who was going to ask the next question, I will allow Michael McMahon to come in at this point.

Michael McMahon: In all the evidence that we have taken so far, and I have not missed any of it, we have not got around to talking about an issue that was raised in the Nicholson report but is not covered by the bill, although it is generating a bit of interest in the Parliament. Last Thursday, I attended a meeting at which the issue of the supply of alcohol at sports grounds was raised. The ban on the sale of alcohol in sports grounds, particularly football grounds, was introduced in the 1970s on the back of the McElhone report into football crowd behaviour. Has the Scottish Executive taken time to consider the issue?

There were two aspects to the discussions that I heard last Thursday. The first is technical and relates to the remit of the bill in relation to the supply of alcohol at sports grounds. The provisions to ban the sale of alcohol were in the Criminal Justice (Scotland) Act 1980, which was then updated through the Sporting Events (Control of Alcohol etc) Act 1985 and then the Criminal Law (Consolidation) (Scotland) Act 1995. Would the Licensing (Scotland) Bill be the right place for any amendment to be made to the law covering the supply of alcohol at sports grounds? That was one issue that people at the meeting last Thursday wanted to have clarified.

Tavish Scott: My answer is that, no, the bill would not be the right legislation through which to take action on that.

The Convener: I should point out that, if a member were to lodge an amendment on the issue, it would be for me to rule whether it was within the competence of the bill, which I would do under the guidance of parliamentary officials.

Michael McMahon: I fully appreciate that, convener.

Tavish Scott: I was not trying to suggest that you did not have that power, convener.

Michael McMahon: I was asking because no one at last Thursday's meeting knew whether the Licensing (Scotland) Bill was the right place for making that decision.

The rest of our discussion was on the theory behind the Nicholson report, which is the second point that I want to raise. The Nicholson committee concluded:

“We do not consider that it is appropriate that we should make any positive recommendations regarding the current restrictions on the sale and supply of alcohol at designated sports grounds.”

The committee suggested, however, that “the time may now be ripe for all concerned to give consideration to whether any changes are now appropriate”, given that the original ban came in on the back of problems in the 1970s. Would the Scottish Executive welcome a review? The Nicholson committee also said that the time might have arrived to run a pilot scheme at one or another of
the major stadiums. What is the Executive’s view, given that the issue is raised in the Nicholson report and the bill seeks to address similar issues?

**Tavish Scott:** Michael McMahon raises an important issue and he is absolutely right that the Nicholson committee has made that suggestion. We have not accepted its proposal, however, and it might be useful to talk a bit about the process. I hope that Michael McMahon will accept my reassurance that the issue was considered very carefully last year. Last summer, or in the early part of 2004, there was a lot of cross-portfolio ministerial discussion, because the issue cuts across many different areas, such as health, antisocial behaviour, public order, justice and safety in general.

At the time, ministers had regard to the views of the Nicholson committee. However, based on analysis of that position and taking into consideration the point that Michael McMahon made about when the decision was initially taken and the legislation at that time, it was decided in May 2004 that existing controls would be retained, on the ground that the arrangements had worked well and were continuing to play an essential part in reducing drink-related disorder and the risk to public safety in and around events.

It is fair to say that ministers feel that any other decision would be inconsistent with other key Executive policies and so are opposed to the Nicholson committee’s suggestion for a pilot scheme. That decision was taken last May and no further analysis has been made. However, I assure the committee that a lot of careful consideration was given to the issues by ministers across many portfolios.

**The Convener:** Obviously, the circumstances of the time were that quite serious disruption was taking place, particularly at football matches. However, there was not a problem at other sporting events, such as rugby matches. Should ministers perhaps consider whether latitude should be given to the Scottish Rugby Union in relation to Murrayfield and international rugby matches?

Also, behaviour at football matches seems to me to be considerably better than it was when the ban was introduced. In England and Wales, alcohol can be purchased at premiership football grounds and it seems to me that the behaviour of people at football matches in Scotland is not markedly worse than that of people in England and Wales.

**Tavish Scott:** Those are fair points and they were very much part of the ministers’ considerations—they were part of the mix of analysis that we believed it important to consider. However, again, the balanced judgment was that public safety and public order issues are paramount. The whole matter comes under the area of risk analysis based on professional advice from the police and other agencies. The risk analysis did not support any relaxation of the law.

You make a fair point about the SRU and international rugby matches, convener, but those involve large crowds of 60,000 or 70,000 people. We have all been present on such occasions and know that plenty of people consume alcohol before attending. The judgment that was made last year was based on an analysis of all the factors. It was not an easy call, but in order to send a consistent message not just in this area, but in a number of other areas, not least public safety and public order, we decided to maintain the existing position.

16:15

**The Convener:** Three members have indicated that they have questions. I ask them to be concise, because the minister has set out clearly the Executive’s position on the matter.

**Bruce Crawford:** My first question relates to the technical issue that Michael McMahon raised. The minister said that it would not be appropriate to amend the law relating to the supply of alcohol at sports grounds through the bill. Would it be technically competent for us to do so?

**The Convener:** It is for me to rule at stage 2 whether an amendment is competent and for the Presiding Officer to do the same at stage 3.

**Bruce Crawford:** We are not yet at stage 2—we are only at the stage of questioning the minister. In your view, minister, would it be technically competent for members to lodge such an amendment? The long title of the bill suggests that its scope is fairly wide, because it refers to the Scottish Parliament making “provision for regulating the sale of alcohol, and for regulating licensed premises and other premises on which alcohol is sold”.

Whether an amendment would be appropriate is another issue.

**Tavish Scott:** We understand that an amendment to change the law relating to the supply of alcohol at sports grounds would not be technically competent. However, it is not for me but for the convener and the Presiding Officer to rule on the matter. I would not begin to second-guess the convener.

**Bruce Crawford:** The convener may have to make a ruling at some stage.

I will comment in passing on another issue on which the minister may want to reflect. I regularly attend football matches in Scotland. In my view, the trouble is located on the streets, in parks, up closes and in bus parks, where people drink
considerable amounts in an unregulated, uncontrolled way. There is more disorder outside grounds because of the alcohol that is consumed there. I understand that the subject needs to be examined more closely, but would allowing alcohol to be consumed in a much more controlled fashion be a more mature way of dealing with the issue in future? Having a regulation that stipulated that on the day of a match no drinking would be allowed in public outside football and other sporting grounds might be a more appropriate approach.

Tavish Scott: Many areas have byelaws relating to drinking in public areas, so the issue could be addressed in that way. Allowing for the sale of alcohol at football grounds would presumably enable the people to whom Mr Crawford refers, who have already drunk alcohol, to drink more. It is difficult for me to make sweeping generalisations on the matter. I can only repeat what I have said, which reflects our analysis and the position that we hold.

Michael McMahon: My point is not dissimilar to the one that Bruce Crawford made and is based on the discussion that took place at the meeting that I attended last Thursday. There has been analysis that indicates that the average person who attends a football match drinks about three pints of beer in a pub before going to the game, and that it would be better for them to be in the ground earlier and to have the beer there.

There is no restriction on the amount of alcohol that may be drunk in the context of corporate hospitality. Often people who are having a glass of champagne with their meal in those surroundings abuse the situation by consuming a considerable amount of alcohol. There must be some restriction on activities that already take place inside football grounds, such as people having champagne with their eggs Benedict—or not, in some cases. Should something be done to address that issue?

Tavish Scott: The member makes an entirely fair point and raises an issue that must be addressed, although I would rather not be drawn on the particular circumstances to which he refers. By definition, the reforms apply to corporate hospitality facilities, which will have to have operating plans, take all the appropriate measures that we expect of any licensed premises and comply with standard licence conditions.

I accept that there is potential for the argument to be partly about finance-raising mechanisms for football clubs. Football clubs are corporate businesses—the bigger clubs are huge corporate businesses with turnovers of tens of millions of pounds, if not more, per annum—so we need to be clear about the arguments and, as much as possible, the motives in this discussion.

Paul Martin: The proposal to allow the sale of alcohol at sports grounds is not a reaction by the clubs to fans’ concern but a purely finance-based initiative. Clubs need the additional capacity to make them viable. I understand why they are making that proposal.

The bill includes measures that could make pubs family friendly, but how could those measures possibly work if children were exposed to people drinking in a football environment? The argument is similar to that which is made in relation to banning smoking in public places: people who do not want to be exposed to cigarette smoke have pushed for such a ban. How would the proposal to sell alcohol at sports grounds help people who do not want their children to be exposed to drinking? I know that that can happen at the moment, but adding to spectators’ opportunities to drink when they arrive at football grounds would provide an opportunity to accelerate the drunken state.

Tavish Scott: I agree with Paul Martin’s point. There appears to be an inconsistency in the clubs’ attitudes. On the one hand, they rightly work hard to be more family friendly, to encourage kids to go along to games and to encourage more of our youngsters to play football by allowing them to see the best football players in Scotland—we all hope passionately that that will happen and be a source of pride for us all. On the other hand, however, they would allow children to see signs of alcoholic behaviour of one variety or another. Paul Martin makes a good point and I hope that the football clubs will reflect on it.

Dr Jackson: Many people consider that the bill’s provisions on permitted hours will open up the potential for variation and patchwork provision not only throughout Scotland, but within localities. Would such enormous variation, not only from place to place but from premises to premises, give rise to any operational difficulties for the police?

Tavish Scott: 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, because they will be well aware of the point that Sylvia Jackson makes.

I ask Jacqueline Conlan whether that is right.
Jacqueline Conlan: Yes, it is, but I will add to it a little. Boards will have policy statements and we expect that those statements will give a steer on hours. A board might take into account the nature of a particular area—residential or city centre, for example—and say that it would expect premises in that area to close at, for example, 1 o’clock.

However, under that system, licensees can apply for the hours that they want to open. If the board has a certain policy, a prospective licensee can come in and say, “We hear what you say on that, but we think that you should allow us to open an hour later for X, Y and Z reasons. We will have security staff and introduce closed-circuit television and so on.” They can make a case for the hours that they want, and the board will have to take a decision on whether that is appropriate, on the basis of the licensing principles.

Dr Jackson: I want to ask about occasional extensions of permitted hours for events. If I remember correctly, the student body that gave evidence thought that there could be an unforeseen occasion for which it would want an extension. Why is there no provision for that? Is there a reason, or has it just not been thought about?

Tavish Scott: 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 that needs properly to be addressed. If the committee makes a recommendation on that, we will be happy to consider it.

Dr Jackson: Given that there will be no requirement for licensees to apply for regular extensions of permitted hours, as is done annually at the moment under a system that requires public advertisements, will there not be a loss of focus for potential objectors? Does that not detract from the community involvement aim?

Tavish Scott: That point has come out in a number of ways. The operating plan will detail the individual licensed premises hours, on which the application will be based. In the first instance, therefore, there will be the right to object or to take a view on that. Thereafter, just as we discussed earlier, if there are concerns, complaints or worse—criminal activity for example—the licence can be reviewed. The strong powers of review mean that there is nothing to stop that. I do not want to overegg the pudding, but the position of licensing standards officers is important in that regard. If a particular licensed premises is causing concern, the LSO has principal responsibility to mediate and ultimately to make a written report on the basis of those concerns. At that stage, a process would be followed that would allow people to be involved.

I understand the concern, but the purpose of the regime is to move the process forward and to have a more positive approach to problem solving, which we hope will help.

Dr Jackson: The next question is almost a reverse of my earlier question. At present, many, if not most, licensing boards operate a differential in opening hours—although extensions make them more similar—such that pubs might shut at midnight while nightclubs might stay open until 3 am. What will happen to that in the future? The police have expressed concern that there could be operational difficulties if all premises shut at the same time.

Tavish Scott: That is an interesting issue, which I discussed with the Strathclyde police during the evening that I spent with them in Glasgow. There is an argument that a staggering approach—for example, if a particular institution or club wants to close at 2.30 am as opposed to 3 am or 3.30 am—can help with policing and dealing with public disorder. The principles of the bill are to help to reduce public disorder, to allow communities to be safer and to protect people. The national conditions will apply and those principles must be followed in an individual operating licence.

As Jacqueline Conlan said, building in safety measures and precautions such as CCTV and other things that are appropriate to all stewarding, particularly at a late time of night or in the early morning, will allow adequate controls to be in place. That will be done in conjunction with the police and other authorities.

16:30

The Convener: I thought that the idea was to get away from a staggering approach in the early hours of the morning.

Tavish Scott: I am sorry for not seeing your pun coming. I could comment, but I am not going to.

The Convener: The police and others have raised a serious point with us. They think that the gap between pubs and clubs closing could be narrowed as a result of closure times not being as clearly defined. Currently, perhaps half of the people who are in a city centre will leave the pubs and go home and the other half will leave the clubs two or three hours later and go home, but the gap could narrow and a bigger concentration of people would have to be dealt with.

Tavish Scott: The gap could narrow, but I suspect that a number of premises will not want to take the extra leap to meet the national conditions that will apply and that there will still be market differentiation. Some premises will not be prepared to make the necessary investment to upgrade to the next level and therefore to be able
to remain open later. I suspect and hope that that
will take care of the matter, but we will keep a
close eye on it and I suspect that the national
licensing forum will want to keep a close eye on it
too.

**Dr Jackson:** Margaret Smith asked about police
involvement with the licensing boards, and I think
that it was said that the police do not have
sufficient input. Will sufficient procedures be in
place for the police to liaise with licensing boards?
The police’s input in such scenarios is important.

**Tavish Scott:** I do not have any concerns about
that; I have been reassured in discussions with
Strathclyde police and a number of other police
authorities, including the constabulary in my home
area. I am not in any way comparing a small town
in Scotland with Glasgow city centre, but getting
police perspectives from different parts of Scotland
is interesting. Generally speaking, the police do
not have any concerns about their ability to ensure
that their point is heard. Jacqueline Conlan will talk
about the technical process that is involved.

**Jacqueline Conlan:** The general view that was
expressed in the Nicholson process was that the
police work extremely closely with licensing
boards. Largely as a result of the proposal for
licensing standards officers, the police’s view is
that it will be easier to build up relationships under
the new regime, as there will be identified persons
with whom to build up relationships. In general,
police forces have licensing sections that deal with
liquor licensing and other subjects. They are
administrative sections that also look around
licensed premises. I think that the police see their
role as being very much supported by the
licensing standards officers. If communication
must be improved, there will certainly be a direct
route for communication to the board and if there
is a suggestion that a licence should be reviewed,
it is clear that the police and the LSO will
collaborate closely before a decision is taken to
request a review or on remedial action that must
be taken.

**Dr Jackson:** If boards develop policies on hours
to maintain differentials and particularly in order to
maintain the viability of dedicated nightclubs,
would that be tantamount to reintroducing
categories? Obviously, the issues of disorder and
staggered times must be considered.

**Tavish Scott:** The operating plan system at the
heart of the regime will ensure that licensing
boards have assessed—at the initial application
stage and in the on-going process—applications
against their standard conditions locally and the
conditions that must apply to the institution; I keep
calling licensed premises institutions, but you
know what I mean.

I do not have any concerns in that sense, because I believe that the process will be robust
and transparent enough to be observed and consulted on, and for concerns to be expressed if
need be. The process is subject to review, and
during the period an individual, a community or a
community council can raise any concerns. Other
measures, such as licensing standards officers,
are also available. There are enough checks in the
system to deal with that point.

**Dr Jackson:** But you accept that, at the end of
the day, licensed premises might all want to
remain open until a fairly late hour, which might
cause problems, and we might end up with the
staggering process. We might go back to the
same category system that we have at the
moment.

**Tavish Scott:** We cannot make any
assumptions about how the system will work out. I
hope that Sylvia Jackson accepts that there will be
a difference between large city centres, where
there is a broad range of licensed premises, and
Stirling and other smaller towns, where there is not
that range. 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.

**The Convener:** Would it be possible for a board
to keep the different categories under the bill?
Could it determine that a nightclub is a premise
that opens at a specific time, so that in order to
qualify for a licence a nightclub could not open at
11 am and still be open through to 3 am, but
instead would be able to open only at, say, 9
o’clock or 10 o’clock at night?

**Tavish Scott:** That is not our intention. We
should be describing the situation in terms of the
national conditions that will apply, and therefore
the hoops that will need to be gone through to
trade late into the evening or into the early
morning. I do not know whether that is helpful. I do
not see the system working in that way.

**Jacqueline Conlan:** That is right. In my mind,
that would run counter to the principles of the bill.
We have a single premises licence and a personal
licence, and the boards’ policies and licensing
conditions are not intended as a means to
circumvent that framework. The intention is
different under the new system. Not only will we
have a single licence, but if there has to be a
distinction between premises, it should be able to
be supported on the basis of the licensing
principles, such as public order and public
nuisance. I cannot see the system supporting a
distinction that says that, just because premises
are classed as a pub, we will make them close
earlier because they do not have a dance floor.

A distinction exists partly because, when the
1976 act was drawn up, the concept was that
someone could open later at night if their provision
of alcohol was ancillary to the entertainment that they provided. However, in essence, people go on to a nightclub to drink and not necessarily to dance; they want to go to the club to obtain alcohol.

Mr Davidson: I once had the privilege of convening a meeting between licensees, a police force and a Government. That happened in the Falkland Islands, and it concerned a specific case that is applicable in this context. A lot of servicemen went for rest and recreation to Port Stanley, where the pubs were all obliged to close at a set time. It was the old fashioned Scottish system—last orders were called, the bar shut at 10 o’clock and at 10 past 10 people left. That put everybody on the street, and the police force could not cope with large numbers of troops being thrown out with nowhere to go. I learned from that that the publicans did not just want to extend the marketplace. They did not want everybody to be chucked out on the street at the same time, so that the problem, if there was one, would simply be displaced and the police would have to deal with it.

The police did not want everybody out on the streets at the same time, because they did not have sufficient manpower to deal with that situation and the Government did not know what to do. I want the minister to be absolutely clear about whether, if we are to have staggered closing times, police forces will be able, almost in a mandatory sense, to decide how many establishments they are capable of policing at certain times and to use that power over the licensing boards’ new powers. We need clarity from the minister about whether that is what he has in mind or whether such matters will simply be dealt with through good will between the licensing officer, the police force and the board.

Tavish Scott: If I may say so, that is a bit of a simplification of the process. It should not be taken as gospel that police forces always say that they will jump through any additional hoops or meet standards during the transitional period in order to ensure through regulation, for example, that premises will have to improve their standards of behaviour and activity? Will all licensed premises that exist now roll forward with grandfather rights without having to make clear the Executive’s position on the transitional arrangements and grandfather rights. Will all licensed premises that exist now roll forward with grandfather rights without having to jump through any additional hoops or meet particular standards of behaviour and activity? Will you wish to ensure through regulation, for example, that premises will have to improve their standards during the transitional period in order to keep their licences? Is there an element of
Mr Davidson: When do you think your consultations with the trade will be finished? When will you come to Parliament with definite views about transitional periods and application of grandfather rights?

Tavish Scott: We hope to do some of that through the autumn, but we certainly hope to have done that by the end of the year; we might even be able to do it before the bill finishes its final process through Parliament. It is important that the committee and Parliament are kept up to date with that. It will also be in my interests to ensure that those discussions happen smoothly, clearly and transparently so that the trade knows exactly what is going on. I will try to ensure that that happens.

Mr Davidson: Did I hear you correctly that that will happen before the final stage of the bill?

Tavish Scott: We hope to have the details sorted out by the end of the year.

The Convener: Bruce Crawford has a supplementary question.

Bruce Crawford: My question is not so much on grandfather rights and transition as it is on administrative complexity. I was encouraged by what the minister said to David Davidson. We have seen correspondence today from London about deadlines. For instance, there is a deadline of 6 August for transferring currently held conditions across to the new regime. Only about 10 per cent of people have applied so far and a huge volume of applications is expected right up to the deadline. Licensing boards in Scotland must be concerned about administration of the transition. A working group has been set up. Will the minister assure us that the group will look not only at grandfather rights and fairness but at the sheer volume of work that licensing boards will have to do? We may have to consider some sort of staggering system—although perhaps I should not keep using that word—or some sort of incremental system so that people can cope with the administrative burden. It will be pretty cumbersome on the trade and on the licensing boards.

Tavish Scott: That is a fair observation. I ask Jacqueline Conlan to give Mr Crawford some details. If there are details that we cannot give today, we will write to the committee. We have a lot of work to do on the system.

Jacqueline Conlan: I have recently set up a small group of five clerks to consider transitional arrangements; Stewart Ferguson, the committee’s adviser, is one of them. The primary purpose of
the group is to consider the practicalities and administrative difficulties of transition. We acknowledge those difficulties and accept the point that Mr Crawford has made. We are aware of what is happening in England and Wales, and I am going to see my opposite number in Whitehall on Friday to discuss some of the problems that they have encountered. I hope that we will be able to avoid the same problems up here.

The group has met only once and administrative issues were discussed. 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.

**Bruce Crawford:** That is reassuring. Thank you.

**Mr Davidson:** You have spoken a lot about overprovision. From what we have heard, not all of your thinking is engraved on tablets of stone. That is fair enough; you have been very open about that and have said that consultation continues. However, should there be more guidance so that boards and the trade understand what is meant by overprovision, and understand how the measures on overprovision will be administered?

Sylvia Jackson asked about this earlier: apparently, there is a heading of "licences" but, within that, every single licence application will be treated as if it were in a separate category. Could we have some clarity on that?

**Tavish Scott:** That is a fair question. Our intention is that one of the first tasks of the national licensing forum will be to provide a clear definition of overprovision. Mr Davidson will acknowledge that the process will be subject to parliamentary approval of the bill; he would have criticised me if we had been presumptuous about that. We are seeking to achieve the clarity that people are calling for, and that will be one of the first tasks of the national licensing forum. I hope that that work will get speedily under way this summer.

**Mr Davidson:** Will the group of five clerks that Jacqueline Conlan mentioned consider how overprovision might be defined? Definitions are important requirements in legislation, if we are to avoid ambiguity and ensure that provisions cannot be open to challenge left, right and centre.

**Tavish Scott:** No, that group's job is not to define overprovision and it would be unfair to ask it to undertake such a task. It is definitely the responsibility of the national licensing forum to define the term and to undertake further work in relation to the definition. The clerks will deal with the matter locally.

**The Convener:** You said that the proposed national licensing forum would produce guidance on overprovision. You have said in the past that there will be trade representatives on the forum. For clarification, will you confirm that the forum will include representatives of regulatory bodies, by which I mean licensing boards?

**Tavish Scott:** The matter is under discussion and we will come back to the committee on it—perhaps even before the summer recess. No final decision has been made, so I ask the committee to bear with us.

**Bruce Crawford:** Although the fee regime is not in the bill, it is one of the big issues for the trade. The intention is to recover the costs of the new licensing arrangements through the fee system. What level of fee increase is anticipated in the move from the current system to the new premises licences? Will the fees cover all the costs that boards incur and the costs of providing licensing standards officers? Will help be given with the set-up costs, which will be significant? Although the trade understands that there must be fee recovery to help to pay for the process, I anticipate that it will be concerned about substantial set-up costs. Transitional help from the Executive would help the trade to accept the new arrangements and take ownership of them.

**Tavish Scott:** Members know that a fee review is under way. I must allow the review to conclude and then consider its recommendations. The review will address the matters that Bruce Crawford raises, which are important considerations for the trade and for licensing boards. Licensing boards have made vigorous representations on the matter because they have concerns. I cannot say much more at this stage because until the review is concluded we cannot respond to it.

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, as Mr Crawford knows from his background in local government.

Bruce Crawford: I realise that this is a difficult area, but given that you have set up the group to consider it, will you assure us that the group will examine how to establish a fair level of fees? Small and large operators all pay different business rates, but if a standard fee is to be applied to them all, the small operators will be particularly hard hit. The Scottish Grocers Federation submitted interesting evidence about bands and the levels of fees that are to be paid. I know that you cannot be conclusive, but I want to know that the issue is being considered.

17:00

Tavish Scott: I cannot be conclusive, but I assure Mr Crawford that the fairness that he has just described is one of the principles that the review group is using. Jacqueline Conlan will keep me right on this, but I think that business rates are one of the mechanisms that can be used to reflect the different circumstances and sizes of premises.

The Convener: We move on to the question of excluded premises. Section 115 of the bill contains a presumption against premises that are primarily used as garages. I have a lot of sympathy with that proposal when we are talking about a busy urban area where there are many other licensed establishments and where most of the garage’s business is the sale of petrol and other associated goods. However, one concern that has been raised is that in some rural parts of Scotland where retail forms a significant part of the income of such premises, the proposal could lead to the closure of rural petrol stations as a result of their profitability dropping significantly. Did the Executive consider that and are you able to take it into account?

Tavish Scott: 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.

The Convener: Okay. Thank you for that.

I have questions about sections 116 and 118. Section 116 is about exempt premises; hovercraft are defined as exempt premises—I am not aware that hovercraft operate in Scotland—as are aircraft and railway vehicles. I understand the need for that because of the type of operation that they run. The sale of alcohol in aircraft and railway vehicles is governed by United Kingdom legislation. Is there any intention to require individual licence holders to be present on such vehicles when they are operating within the UK and serving alcohol? There are many issues around people being properly trained in serving of alcohol that are as appropriate to such operations as they are to static licensed premises. As we have seen on many occasions, antisocial behaviour can also happen on railway vehicles and aircraft when people are under the influence of alcohol.

Tavish Scott: I will let Jacqueline Conlan answer that, but that is a good point. There have been some difficulties because aircraft and trains operate throughout the UK. For example, can we use the measures for Loganair services that only operate in the Highlands and Islands?

My understanding is that hovercraft have been included because they were included in the 1976 act. That might not be a reason, but that is where it comes from. Jacqueline Conlan can deal with the aircraft issue, as long as she does not stop me getting a gin and tonic on the way home.

Jacqueline Conlan: Aircraft are covered under other legislation. We took the view that it would be difficult to cover certain journeys but not others where airspace is involved. However, plenty of controls are available to deal with problems that arise on passenger aircraft.

Trains are a different story. It is difficult to license trains because they are not just moveable, but composed of a number of carriages. A train is not a static item that can be licensed, and trains also tend to travel through various different licensing board areas. We have tried to introduce some controls—for example, we hope that such exempt premises will still have to comply with the no-proof, no-sale requirements of the bill although they will not have to be licensed.

The Convener: Let us move on to ferries. Issues have been raised with us by some ferry operators about the definition of “vessels” that would fall within the definition of “premises” and would require such vessels to be licensed. Often, ferries are not moored or berthed in a specific location, but may move around the area in which a ferry operator operates. How will we define which area would be the appropriate licensing board area for a ferry? Also, would it be appropriate for licensing boards to be given certificates of suitability from building standards officers in relation to ferries, which would be types of construction with which those officials were not familiar?

Tavish Scott: 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.

Bruce Crawford: I want to ask about appeals. Information has come to us—I do not know how accurate it is—that the bill will be amended to give objectors to, and applicants for, personal licences the right to appeal. Is that the situation?

John St Clair: 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 finally agreed on three specific points. First, 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. Secondly, any appeal will be made to the sheriffs principal and will come from either an applicant or somebody who asks for a review of a licence. 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.

Thirdly, appeals will be made by stated case and, following Nicholson’s recommendation, there will be a special hastened procedure to appeal against an interim suspension when a board has said that circumstances are such that a licensed premises should close down immediately. We will spell out by amendment at stage 2. Secondly, any appeal will be made to the sheriffs principal and will come from either an applicant or somebody who asks for a review of a licence. 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.

That package of appeals measures will be produced as an amendment that will be lodged at stage 2.

Bruce Crawford: It is useful to hear that. Those are complicated but important areas of the bill. Is there any capacity within the Executive to let the committee see that stage 2 amendment a considerable time before we reach stage 2?

John St Clair: Yes—we would be happy to do that.

Fergus Ewing: The Scotch Whisky Association mentioned that, in England and Wales, there is a statutory offence of refilling branded bottles with cheaper drinks—for example, refilling a malt whisky bottle with cooking whisky. There might be evidential difficulties in some such cases, but it seems to me to be a serious point, so I wonder whether the Executive might follow suit?

Tavish Scott: The Scotch Whisky Association approached us and we met its representatives. It wrote to us asking that we add the substitution of spirits drinks to our list of relevant offences when we make regulations. The minister agreed to that and we wrote back recently to tell the association that the Executive will be happy to do that.

Fergus Ewing: I suppose that it would still be possible to substitute one malt for another.

I hope that my next question is within the bill’s scope. It relates to the regulation of licensed premises. If, following a smoking ban, licensed premises wish to provide facilities to allow customers to continue to smoke lawfully—as has happened in Ireland—such as outdoor seated areas within the curtilage of the premises, canopies or other methods of providing protection from the weather or even, as I have heard from an intern from Cork who works for me, retracted ceilings in nightclubs, which is an advert for Irish ingenuity if there ever needed to be one—

The Convener: I do not think that such ceilings would go down well in Scotland, given the rainfall.

Fergus Ewing: Would the Scottish Executive support such measures in principle?

Tavish Scott: I can only support in principle imaginative business solutions to a policy objective that, I am sure, the majority of us share. Such business innovation is to be welcomed, and I am sure that a number of such building solutions will be employed in coming years.

Fergus Ewing: So the Executive does not propose to replace a ban on smoking in public places with a total smoking ban.

Tavish Scott: The Executive’s position on that is clear and I am aware of no proposals to change it.

The Convener: That brings us to the end of a fairly extensive period of scrutiny of the Executive. I thank the minister and his officials for their contributions and look forward to starting stage 2 in a number of weeks’ time—provided, of course, that the general principles receive Parliament’s approval at stage 1.
LICENSING (SCOTLAND) BILL 2005 - STAGE 1

At the meeting of the Local Government & Transport Committee on 17 May, we undertook to write to the Committee on three issues, setting out our policy on each of them. Those three issues were:

- the changes to be made to the appeals provisions at stage 2;
- confirmation that the proposals in the Bill are compliant with ECHR; and
- the position relating to the powers for landlords of licensed premises to use reasonable force to eject someone from the premises.

Our policy is set out below.

Appeals

The text that appears in sections 121 and 122 of the Licensing (Scotland) Bill 2005 will be replaced. Further work is needed on the amendments so we are unable to provide you with the draft text at present.

Basically we intend to follow the recommendations of the Nicholson Committee and allow appeals on all substantive decisions of Licensing Boards but not on procedural rulings. Objectors to a licence application may not appeal if they are unsuccessful but a person seeking the review of a licence may appeal an unsuccessful application for a review. We would draw the Committee’s attention to the following further points:

(a) we have linked the recall to an appeal on the basis that an appeal can be lodged simply and immediately and will create a process (details of how an appeal is lodged will be fleshed out in an Act of Sederunt);

(b) suspension will take immediate effect on whatever date the Licensing Board decides – this may be of immediate effect but that will be a decision for the Board. The key concept is that it must be effective prior to the outcome of an appeal;

(c) we have set up a test which the court must apply of balance of convenience rather than the ECHR test of disproportionality, on the basis that balance of convenience is easily understood by the courts and we do not want to confuse this test with a ground of appeal. In any event we thought some test was necessary; and

(d) amendments to reflect these changes will be introduced at stage 2, along with further amendments listing which rulings are appealable. Special provisions may be required if the appeal is against a condition the Board may wish to impose, but policy on this is not yet finalised.

ECHR

Local Authorities as licence holders

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

The Executive has considered these points against the current ECHR jurisprudence. We think that it is questionable whether Article 6 rights are engaged in the two situations described above. However, even if that Article is engaged, it is not thought incompatible with Convention rights for local authorities to be granted licences in their own name.

Licensing boards as quasi judicial administrative bodies

Licensing Boards in Scotland are quasi judicial administrative bodies. They are quasi judicial in so far as they operate within the legal constraints of the Licensing Act 1976 – and operate within the legal constraints in the Bill. However they are also administrative bodies in as much as they are composed of locally elected politicians and not judges, who have a large area of discretion to respond to perceived local needs or their own stated political policy as operated within their area of discretion.

That such bodies of democratically elected representatives can act in a quasi judicial capacity without falling foul of the ECHR has recently been recognized by the House of Lords.

Sheriff Principal Nicholson questions the independence and impartiality of the Licensing Boards as currently constituted when making decisions about licences held by the authority itself. If the council or Licensing Board has a policy within its discretion to operate in a particular way, it is not thought that this would constitute disqualifying bias. If, for example, the policy were to favour the restriction on the number of licences held by the private sector and increase those held by the council and other public sector bodies, this would not disqualify. This has again been stated in the House of Lords recently.

Impartiality

As regards the suggested lack of impartiality of the Licensing Board when hearing an application from the authority itself, it is suggested that if the Board is implementing a policy by favouring one group, this does not disqualify. If it is suggested that the Licensing Board has some sort of financial interest in the outcome and hence has bias or apparent bias, the connection does seem slim. The Board members may or may not want to sponsor council licences or block private ones. This separation of the Licensing Board from the authority itself is underlined by the fact that the authority at present has a right to appeal. If the Licensing Board were to be thought always to favour the views of the authority, there would be no need for the right to object, whose main function is to give the objector the right of appeal against a decision of the Board.

In any event, the House of Lords does not consider in the case of administrative bodies that some financial interest of the administrative body in the outcome in itself disqualifies the administrative body on the ground of bias, although at review if this was to be shown to be real and to have affected the decision it could be raised.

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2 R (Alconbury) v. Secretary of State [2001] 2 All ER 929. See Lord Nolan, at page 979: “To substitute for the Secretary of State an independent and impartial body with no central electoral accountability would not only be recipe for chaos: it would be profoundly undemocratic.” and Lord Hoffman, at page 980: “In a democratic country, decisions as to what the general interest requires are made by democratically elected bodies or persons accountable to them…. [S]ometimes one cannot formulate general rules and the question of what the general interest requires has to be determined on a case by case basis. Town and country planning or road construction, in which every decision is in some respects different, are archetypal examples. In such cases Parliament may delegate the decision-making power to local democratically elected bodies or to ministers of the Crown responsible to Parliament. In that way the democratic principle is preserved.”

3 R (Alconbury) v. Secretary of State [2001] 2 All ER 929 per Lord Slynn at page 975.

4 R (Alconbury) v. Secretary of State [2001] 2 All ER 929 per Lord Nolan at page 979.
Availability of Review renders proceedings as a whole to be Article 6 compatible even if flaw at first instance

Nicholson (paragraphs 17-29 of Appendix C) discusses the ECHR jurisprudence in relation to Article 6, where there is a review. Briefly the jurisprudence is that even if there is some lack of impartiality or other flaw in the way a decision making body operates, this is not to be treated as a fundamental flaw as far as compatibility with Article 6(1) is concerned, provided there is an adequate judicial control by a tribunal to correct any flaw in the operation of the decision-making. Again the main UK case is \textit{R (Alconbury) v. Secretary of State}, followed in Scotland by \textit{County Properties v. Scottish Ministers}. The two cases cited concerned planning, but Nicholson was of the view, with which we agree, that planning as far as the jurisprudence in this area is concerned is sufficiently analogous as to allow read-across.

One aspect of the developing jurisprudence on the sufficiency of adequate judicial control or review concerns the type of decision being taken by an administrator (e.g. whether it is policy-based or factual) and whether this in turn impacts upon the adequacy of judicial review for the purposes of Article 6.

This issue was addressed in \textit{Alconbury}, which is authority for the proposition that conventional judicial review represents ‘full jurisdiction’ over administrative decisions which are part ‘fact’ and part ‘policy’. ‘Policy’ in this context extends to any discretionary matters, including the weighing of resource considerations and the taking into account of the interests of others who are not before the decision maker.

The case of \textit{Begum v. Tower Hamlets London Borough Council} represents the latest thinking in relation to the appeal or judicial review of administrative decisions containing factual issues. The appeal in this case turned upon a question of contested fact and in holding that a full fact finding jurisdiction was not required in the appellate court, Lord Hoffman stated (pg. 454) that “the question is whether, consistently with the rule of law and constitutional propriety, the relevant decision-making powers may be entrusted to administrators. If so, it does not matter that there are many or few occasions on which they need to make findings of fact.”

Conclusion

The \textit{Alconbury}, \textit{County Properties} and \textit{Begum} cases thus held that normal judicial review was sufficient and there did not need to be a full appeal, and on that basis we think that the current arrangements as replicated in the Bill are ECHR compatible.

\textbf{USE OF REASONABLE FORCE}

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 \textit{Licensing (Scotland) Act 1976} (5\textsuperscript{th} edition) by Sir Crispin Agnew and Heather Baillie, W Green, 2002, at E1.2.298 and \textit{Pidgeon v. Legge} (1857) 5W.R. 89).

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.

Whether the duty of care would extend to anticipating possible harm to persons outside premises if a disorderly person is excluded, would be for a court to determine on all the facts. We know of no legal case absolutely apposite on this point but going on general principles adopted by the courts, we think it highly likely that courts would extend the duty of care to persons outside the premises,

\footnotesize{5 \cite{2001} 2 All ER 929
6 \cite{2001} SLT 1125
7 \cite{2003} 2 AC 430}
but would be influenced by the landlord’s competing duty to protect from risk the customers and others within the premises.
ANNEXE D: LIST OF OTHER WRITTEN EVIDENCE

Copies of the written evidence received by the Committee can be found on the Scottish Parliament website (www.scottish.parliament.uk) or can be provided, on request, from the Clerk to the Committee.

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 Submission
Dundee City Licensing Board
George Allan
City of Glasgow Licensing Board
Heriot-Watt Students Association
Highland Council
Iain Sykes
Law Society of Scotland Evidence
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 Intercollegiate Group on Alcohol
South Ayrshire Licensing Board
The Scotch Whisky Association
West Lothian Drug and Alcohol Concern
West Lothian Licensing Board
Youth Link Scotland
OTHER WRITTEN EVIDENCE SUBMITTED TO LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

SUBMISSION FROM ABERDEEN CITY LICENSING BOARD

Transitional arrangements

It is accepted that, at this stage we do not know how the new legislation will be introduced (save for the appointment or election of Board Members). It is presumed that this will be done by Regulations and formal guidance notes to be issued in due course.

Nevertheless, it is important to emphasise that due to the very different requirements under the new legislation, sufficient thought is given to the transitional arrangements to allow the transfer of existing licences to the new system to be brought about as smoothly as possible.

There will be a considerable workload for Board staff. This includes processing applications by all existing licensees for their premises and personal licences whilst dealing with applications from potential licensees. It will also be necessary to process the personal licences for managers, scrutinise the operational plans and the layout plans, draft policies and regulations, and so on. There is a concern here of perhaps having to deal with the old and new system simultaneously should the new system be phased in, or having to meet a deadline which, depending on circumstances, may be unachievable for some Boards.

It is hoped that transitional arrangements will be the subject of a separate consultation exercise. This is considered essential for the success of the new system.

“Consult”

It would be useful to receive guidelines on the meaning of the word “consult” which occurs at several places in the Act.

For example, the Board in terms of Clause 6, is obliged to consult with the local licensing forum before finalising its policy statement. Consultation in practice can take a variety of forms and clear guidelines in this regard would prevent much debate.

Clause 7 – Duty to Assess Overprovision

This is a radical change from the current assessment of overprovision where each case is decided on its own merits after application. Under the new system overprovision will be predetermined. It is difficult to fathom how this will operate in practice. Where the Board’s policy states that there is overprovision in a given locality how can this be challenged by an applicant? Can the Board’s policy be relaxed if a special case is made out by an applicant?

The Bill states the Board shall consult premises licence holders before determining overprovision in any locality. There is therefore a presumption that overprovision will relate to future applications and that there is no overprovision issue regarding current licensed premises. Is this a correct assessment?

What is the meaning of the term “premises of a particular description”? Does this term, for example, refer to off-sale and on-sale only or does it also refer to the types of facilities offered such as entertainment (or particular types of entertainment) food provision, admission of children, late hours opening etc.

How are capacities to be determined? Sheriff Principal Nicholson proposed that the fire authority would be responsible for ascertaining the occupancy capacity for licensed premises but this does not appear to have been included in the Bill. A statutory method of calculation is required. At present, it is possible to have 4 separate calculations (fire authority, building standards, environmental health and the licensees own guidance), all using different criteria and arriving at different conclusions.
How are persons in the locality to be notified of the overprovision calculation and answers monitored?

Clause 8 – Applicants attempting to influence Board Members

Why should this provision not apply to objectors also? We agree that an approach to Board Members by an applicant, with intent to influence the outcome of an application, is not appropriate. However we think that objectors should be treated the same way for the purposes of natural justice.

Clause 13 – Licensing Standards Officers

The employment of these officers will incur the greatest new expense for local authorities. Without access to the job description and person specification for this post it will be difficult to assess how many LSO’s are needed for each authority. Guidance will be useful once the statutory provisions are known. This should include definitions of the role of the Clerk and that of the LSO and their relationship.

Clause 20 – Notification of Application

The requirement on the Board to notify applications to various parties add a considerable burden to the Licensing Board’s administration and costs. The first difficulty is setting out a suitable procedure to ensure that all the notifiable neighbours are identified. What proof is required that the Notices were issued? What happens if the Board fails to notify one of the neighbours?

If a copy of the application is also to be issued, the photocopying costs alone would be considerable, and given the expectation of the Executive on Local Authorities to expand e-government, this would seem to be a retrospective step.

What procedure is there in the Bill for lodging of late applications or objections?

Clause 34 – Application for Review of Premises Licence

The Bill states “any person” may apply for review of the licence on any of the statutory grounds including breach of a condition or any other ground relevant to the licensing objectives.

This appears to be very wide and may cause potential difficulties. It is suggested that this was not part of the Nicholson or Daniels reports and perhaps this could be explained? To allow “any person” to request a review appears to open the door to malicious or vexatious complaints. We would prefer this category to be restricted.

Clause 65 Determination of Personal Licence Application

The Bill refers to convictions recorded against the personal licence holder.

Guidance would be very useful when considering whether a licensee should remain the holder of a licence. There may be cases where a code of conduct from a licensee is such that does not result in convictions but nevertheless would have, under the old system, put his/her fitness to be the holder of a licence in doubt.

The criminal justice system appears to favour the increased use of Fiscal fines for a variety of offences. This means that potentially a licensee could be involved in an unacceptable code of conduct for some considerable time but which may not come to the attention of the Board because the licensee is not convicted. Are there measures in place to allow the Board to suspend someone’s licence even although convictions have not been sustained against him?

Clause 68(8) – Duty on Board to Advise Licence Holder that Personal Licence due to Expire

This is an unnecessary burden placed on the Licensing Board. The onus of renewing the personal licence should be placed firmly on the shoulders of the licensee. What is the outcome for example
should the Board fail to notify the licensee who in turn fails to renew? We do not see why this duty is placed on the Licensing Board when the emphasis of the Bill is personal responsibility.

**Clause 73-74 Procedure for a Licensing Board Receives Notice of Conviction**

There seems to be an unnecessary burden placed on Licensing Boards where a personal licence holder has been convicted of a relevant offence.

It would be simpler to have a national register of personal licence holders. The licensee is then required to inform the national register of any notifiable changes and the register amended accordingly. Convictions can also be recorded here. The expiry dates of the personal licence would be held in this central register and it should be the responsibility of the licensee to ensure that it is renewed at the appropriate time and that all necessary training requirements are updated satisfactorily. This really needs thinking about or else it will be in danger of becoming unnecessarily complicated and therefore unworkable.

**Clause 115 Excluded Premises**

This excludes petrol stations. There are 11 petrol stations in Aberdeen which are currently licensed. We see no reason why this should not continue to be the case. For what reason are these premises to be excluded? The drink/driving debate has been well rehearsed before any petrol stations were granted licences and does not seem applicable. Most licensed premises have car parks and this will continue to be the case under the new legislation.

**Registered Clubs**

We do not see the necessity for registered clubs to be treated any differently from other licensed premises. Whilst we appreciate that clubs will be more regulated than hitherto we think they should come under the legislation in the same way as other licensed premises. It is considered that the introduction of the new Act gives a considerable opportunity for registered clubs to be incorporated into the general licensing system and thereby meet the minimum standards required by that system.

Without the requirement to have a personal licence holder How far down the membership hierarchy will accountability for the conduct of the club extend? We do not agree with the premise that clubs have a “special character” and do not understand that term.

What is to be the position of registered clubs vis-à-vis irresponsible drinks promotions?

**Clause 123 Appeals Supplementary Provision**

Why must a Licensing Board be party to an appeal? If the Board states its reason by way of stated case to the Sheriff Principal this should be sufficient to allow the Sheriff Principal to determine the appeal. We note that it is anticipated that there will be fewer appeals under the new legislation. However, no guarantees can be given in practice. Licensing Boards should not be party to appeals. One of the problems currently experienced by Boards in decision making is the threat of high costs should the decision be appealed, and Boards have been known to make a decision based on cost and not on judicial grounds.

**Clause 127 Fees**

We welcome the cost recovery basis of Board fees and look forward to participating in the consultation exercise.

In what circumstances might it be envisaged that a repayment of fees will be required?

**Schedule 2 Membership of Local Licensing Forum**

Membership is set at 10 members. Is this sufficient to be representative of all interests in the community? One member of the local Licensing Forum should represent young people and “young people” is defined as 16-17 year olds. We fail to see what this member can bring to the Forum. They are not old enough to consume alcohol so can have no informed contribution to make.
The Forum should be allowed to deselect the Convener on cause shown.

Schedule 3  Premises Licences : Mandatory Conditions

Can it be confirmed that “any other activity” in the operating plan includes activity when alcohol is not being served at the time when that other activity takes place?

For on-sale premises the price of alcohol is to stay the same for 48 hours. Why does this apply only to on-sales? What is the position where premises have on and off sales included in the operating plan?

If there is to be a serious approach to controlling the sales of alcohol to avoid binge drinking, restrictions should also apply to off-sales.

Should this not be entitled “Irresponsible Alcohol Promotions” rather that Irresponsible Drinks Promotions as non alcoholic drinks are not the issue here?

Non-alcoholic drinks must be available at a “reasonable price”. What constitutes a reasonable price given our recent experience in the Court of Session?

SUBMISSION FROM ANNE HILL

Hello I am a Lecturer from Orkney College delivering Servewise Courses in this area.

I would like to stress that the Bill covers issues of Binge drinking, underage drinking etc but does not cover excessive drinking of other groups who also need education.

Drinks promotions and special offers in Off Licences also require some type of monitoring to reduce binge drinking.

I feel that training of all servers is necessary whether part-time or full-time and regardless of time in post.

I am aware that many Licensees and bar staff are lacking in knowledge on a lot of areas such courses touch on.

I also feel that Owners and Managers must have training before a Licence is granted. There are too many people in the trade serving alcohol irresponsibly I feel.

SUBMISSION FROM THE BAR, ENTERTAINMENT AND DANCE ASSOCIATION

Response prepared by BEDA Scotland

Introduction

The Bar, Entertainment and Dance Association (BEDA) is pleased to have this opportunity to comment on the Licensing (Scotland) Bill as introduced to the Scottish Parliament on 28 February 2005.

BEDA Scotland representatives have taken part in the debate and discussions around reform at both a national and local level. Our Chairman, Eddie Tobin and Vice-Chairman, Paul Smith have addressed a number of conferences and seminars, while members sit on a number of local forums drawn together to discuss reform.

BEDA represents clubs and bars across Scotland from the Orkneys to the Borders with corporate operators such as Castle Leisure Group, Luminar Leisure, The Nightclub Company, Regent Inns and Yates Group sitting alongside independent venue operators and NUS Scotland. BEDA members sit on and chair local licensing forums and members are encouraged to participate in
partnership initiatives to tackle issues such as door steward registration, drugs policy and alcohol related disturbance and disorder.

Overview

While we are supportive of the case for reform, BEDA members are concerned that the Bill, as currently structured could well undermine existing businesses, place responsible operators at a commercial disadvantage and create unjustifiable inconsistencies across Scotland. In particular, BEDA members are of the view that:

- All existing licensed premises should be allowed to take advantage of ‘grandfather rights’ in order to protect the value of their investment to date;
- The proposed standard national licence conditions for late opening premises need to be clearly defined and made mandatory for all venues trading beyond midnight;
- The proposed methods of tackling irresponsible promotions be underpinned by clarification that the Licensing (Scotland) Bill will give boards the ability to set a minimum price condition where to do so would be a necessary and proportionate response to alcohol related disorder.
- The Bill must effectively address the issue of deep discounting in the off-licensed sector – while we appreciate that compiling evidence is difficult, it is clear that excessively cheap deals in convenience stores, off-licences and supermarkets are fuelling disorder later on in the evening.

With regard to trading hours, BEDA would continue to urge caution that the current proposals could lead to excessive competition between the pub, bar and club sectors. Both BEDA and the SLTA remain of the view that there should be a standard national terminal hour of midnight for public houses and 3.00am for premises able to meet the following criteria identifying them as bona fide late night venues:

1. DJ on every evening
2. Dance floor to be at least 20% of operating area
3. Extensive foreground sound system and lighting effects
4. Fixed capacity
5. CCTV system
6. Sufficient levels of fully trained stewards
7. Manager with late night venue experience
8. When advertising/promoting venue drinks should be ancillary to entertainment

Comments on specific issues

Licence conditions

The principle of national conditions removing the need for local conditions should be extended as broadly as possible. This should not be seen as an attempt to undermine boards, as they would still have the ability to attach the appropriate national conditions to licences taking into account local factors.

Local Licensing Forums

BEDA wholeheartedly supports the development of local licensing fora, as experience has shown how valuable they can be for fostering genuine dialogue and a true partnership approach between the trade, police, board and other interested agencies.

National Standard Conditions For Late Opening Premises

BEDA supports the development of national standard conditions for late opening premises. As we have seen with the Licensing Act 2003, local authorities are very quickly aware of the ability to
Depart from guidance, which is damaging for operators as it tends to lead to inconsistent regulation, administration and enforcement. A clear set of national conditions will mean all operators across Scotland will be certain as to the required standard of operation should they wish to trade late at night.

BEDA supports the view expressed by Ministers that midnight is the natural start point for the late night sector. In BEDA’s view the following factors could all be conditionalised without proving onerous for responsible operators:

- DJ on every evening
- Dance floor to be at least 20% of operating area
- Extensive foreground sound system and lighting effects
- Fixed capacity
- CCTV system
- Sufficient levels of fully trained stewards
- Manager with late night venue experience
- When advertising/promoting venue drinks should be ancillary to entertainment

Irresponsible Promotions

The issue of irresponsible promotions must be tackled at a national level if we are to avoid the creation of a variety of local schemes. The licensed trade in Scotland is already suffering from the inconsistent approaches being taken by different boards. In BEDA’s view the proposals in the Bill designed to target irresponsible promotions are well intentioned and not without merit. However, operators, should they be so motivated, would find ways around the 48 hour non-differential pricing policy. While the proposed list of prohibited generic promotions could well prove to be an exercise in futility as rogue operators simply find creative ways to re-badge old promotions to evade any ban.

In BEDA’s view, this issue can best be tackled by allowing boards to implement, where necessary, a standard minimum price condition similar to that introduced by the Perth Licensing Board in 2002. This condition should be developed by the Executive to ensure consistent wording and prevent the development of well-intentioned conditions that, through poor drafting, become overly burdensome

No-Proof No-Sale

BEDA supports no-proof no-sale as long as it is made clear to operators what is acceptable evidence of age. There is a danger that operators could sign up to this scheme but then unwittingly accept fake cards.

Conclusion

BEDA members feel that while reform of the licensing system is due, care must be taken to ensure the new regime is robust enough to accommodate and withstand the development of the licensed trade over the next 25 years. By building in structure, clarity and consistency to the Bill, the Scottish Executive will allow boards, trade, customers and residents to work together to deliver better town and city centres.

SUBMISSION FROM BARNARDO’S SCOTLAND

Introduction

1. Barnardo’s Scotland is responding to the call for evidence by the Local Government and Transport Committee on the general principles of the Licensing (Scotland) Bill.

2. Barnardo’s Scotland works in partnership with others to provide 60 projects that support almost 10,000 of the most vulnerable and disadvantaged children and families in our communities. These include services that support children who have been sexually abused; work with pupils at risk of exclusion from school; support for young
people leaving care; and youth involvement projects. Many of the projects work with young people who take drugs and alcohol, with the children of substance misusing parents and with parents with drug and alcohol problems.

3. As a children’s charity rather than a specialist alcohol agency, we could not reasonably be expected to take an informed view on some of the more specialised or technical provisions such as the size of Licensing Boards and the role of Licensing Standards Officers. However, we do recognise the need for an overhaul of outdated and confusing legislation.

Reasoning for the Bill

4. Barnardo’s Scotland supports all objectives of the Bill and is especially concerned with protecting children from harm, improving public health and preventing public nuisance. Young people must take responsibility for their actions but we need to acknowledge that anti-social behaviour can stem from deep-rooted problems. However, we do not condone public nuisance or crime and disorder. Some of the young people who attend Barnardo’s projects experience social harm, the cost of which will be included in the reported cost of social harm in 2002-03 in Scotland at £1.1 billion.1 This social harm includes risky sex, unprotected sex and anti-social behaviour.

Children, Young People and Alcohol

5. The statistics on young people and alcohol and children affected by familial alcohol misuse are stark:

- Binge drinking by girls in the UK rose by 20% to 29% between 1995 and 20032
- 53% of 13 year-olds and 74% of 15 year-olds who ever drink alcohol reported that they had been drunk at least once3
- 63 under 14s were treated for acute alcohol poisoning in 20044
- Between 80,000 and 100,000 children are affected by parental alcohol misuse5
- 3 times as many children and young people talk about the impact of other’s alcohol misuse on their lives than about their own alcohol misuse6

6. Problematic under-age drinking (that goes beyond experimentation or a right of passage) is a real issue for many of our projects. In working with these young people, our projects take a holistic-needs approach looking at a whole range of issues including family and relationship breakdown and school exclusion. Some of the projects also encourage the young people to become more involved with their local community while taking account of the fact that many communities lack satisfactory social activities.

Will the legislation work?

7. There is no magic bullet for dealing with alcohol misuse or the culture of binge drinking or drinking to get drunk. The licensing law provisions should help in dealing with pricing – at least in pubs – and in tackling availability (cutting down in overprovision of outlets). Action is needed to abolish cheap drinks promotions given that alcohol is 54% more affordable now than in 1980.7 We hope that the provision to ban ‘happy hours’ and indeed ‘happy days’ by requiring licensed premises to maintain their drinks prices for a minimum period of 48 hours will work – given that the profit margins for both small outlets and the big chains are quite tight, hopefully they will not have ‘happy

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1 Alcohol Statistics Scotland 2005, NHS - ISD
2 European School Survey on Alcohol and Other Drugs (ESPAD)
3 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2004
4 Scottish Executive
5 Plan for Action on Alcohol Problems, Scottish Executive
6 Childline Scotland - Helpline
7 Alcohol Statistics Scotland 2005, NHS Scotland, IDS
days' beyond 48 hours. The provisions should also help enforce the refusal of sale of alcohol to young people in pubs.

8. It is necessary, in our view, to have a range of effective actions in the areas of prevention, targeted education, treatment, support and regulation to complement changes in the law. Such a co-ordinated package of measures, rather than changes in the law itself, will help to break the link between binge-drinking and anti-social crime, promote responsible drinking and protect children from harm.

The work of Barnardo’s Scotland

9. The World Health Organisation Report, Alcohol: No Ordinary Commodity, rates general education as having negligible effect on consumption and consequences of drinking to excess. As far as vulnerable children and young people are concerned, we believe that the targeted preventative work of our services and early intervention on a holistic-needs basis can have an impact. The Barnardo’s Youth Involvement Project works with excluded young people (aged 12-19 years) in Greater Easterhouse, Glasgow to enhance resilience and to reduce risk-taking behaviour including drug and alcohol use. The Youth Involvement Project undertakes detached youth work and provides individual support and groupwork as well as linking young people to other services. Barnardo’s Aberdeenshire Youth Initiative encourages and enables young people who use drugs (including alcohol) to improve the quality of their lives through reduction or abstention. The focus of the work includes coping strategies, problem solving, understanding yourself, alternatives to drugs and health issues. We also have a number of services working with children affected by familial substance (including alcohol) misuse and with the parents and wider family.

Off-Licence Premises

10. It is disappointing that there are no provisions in the Bill banning promotions of cheap alcohol in off-licences. The Executive’s view is that there is no firm evidence available to link binge drinking with consumption from the off-sales sector. However, the Executive is committed to conducting further research into this matter. We know from our services that a lot of underage young people get their alcohol (mainly cider, Buckfast, MD 20/20 and Alcopops) from off-licences. Local adults buy the alcohol for the younger children and the 15-17 year-olds tend to buy the alcohol themselves. While we do not seek to stigmatise young people with anti-social behaviour – and the health concerns are real as well as the wider issues of poverty, disadvantage and family and relationship breakdown – we believe there is an issue of easily available cheap alcohol from off-licences, binge drinking and associated risky behaviours.

11. There is evidence available concerning the views of young people and alcohol and where they get their alcohol from. However, we are about to seek the views of some young people in some of our services to supplement this and to seek additional information from the young people. It time permits, we would like to make this work available to the Committee and/or to invite members of the Committee to meet some of the young people in our services.

Role and Duties of Licensing Boards and Local Licensing Forums

12. The Bill places a wide range of new duties on Licensing Boards. Also, the new Local Licensing Forums are to include a range of interested parties allowing active participation from grass roots level in influencing the direction of local decision-making. The new system will provide for communities to have a role in commenting on and helping to develop local policy. We would be willing to offer our advice and guidance in relation to young people’s participation in local decision-making using our experience and knowledge of children’s rights, participation and advocacy.
Conclusion

13. The proposed legislative changes should go some way to achieving the objectives of the Bill. But they are not a panacea. Legislative change must go hand-in-hand with a more coherent approach to prevention, education and targeted early intervention. The drinks industry also needs to take more responsibility for its actions although we are aware of some improvement. Barnardo’s itself has recently entered into a partnership with Mitchells and Butlers who has been voted Britain’s Most Responsible Drinks Retailer by Morning Advertise Retailing Awards.

14. In working with young people, we are also aware that they can drink to excess along with taking drugs (especially cannabis) and smoking tobacco. It may be tempting to isolate alcohol from drug-taking – and sometimes that is appropriate but not in all circumstances. Our experience is in looking at, assessing and acting on a whole range of issues in vulnerable young people’s lives. Equally, we are experienced in working with the children (often the ‘unseen casualties’) whose parents misuse alcohol. In these circumstances, alcohol misuse is complicated by its legality and general social acceptability and denial/secrecy leads to some invisibility of problematic drinking and familial support needs.

Barnardo’s Scotland
22 April 2005

SUBMISSION FROM THE BELHAVEN GROUP PLC

The Belhaven Group is Scotland’s leading regional brewer operating a range of activities which include beer brewing, drinks distribution, licensed retailing and tenanted estate management. We own and operate 270 pubs in Scotland and we supply beer and other drink products to approximately 2,000 licensees throughout the country. We employ approximately 1,600 people and we are Scotland’s only publicly quoted (on the London Stock Exchange) company which derives its livelihood almost exclusively from the Scottish licensed trade.

Belhaven is a member of Scottish Beer & Pubs Association and we have seen the submission from the Association’s Chief Executive, Patrick Browne. We agree with most of the content of that submission and we do not intend to regurgitate all the issues raised by Patrick Browne. Instead, we will concentrate on the matters which Belhaven would like to emphasise and also on matters where we differ from SBPA.

Clause 4

We believe that a sixth licensing objective should be added:

“Promoting Scottish hospitality and Scottish tourism”.

Belhaven was represented on the Pathfinder Group set up by the Scottish Executive to advise on the objectives for the Scottish Parliament. This was an initiative led by the late Donald Dewar. The Pathfinder Group’s Hospitality Sector report included the important recommendation that the Scottish Parliament should show the leadership required to maximise the pride and passion which our country has in our hospitality industry, in much the same way as happens in Ireland.

There is no doubt in our minds that the consolidation of licensing law represents a huge opportunity to give leadership in the objective of creating the highest standards within the leisure industry which will be to the benefit of our citizens and visitors to our country. We are extremely disappointed that there is no evidence that the recommendations of the Pathfinder Group have been adopted. However, it is not too late!
Clause 7

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.

Clause 10.2.(1)

We have concerns about the respective roles of national licensing forums and local licensing forums. It is not clear to us how responsibilities will be divided and we believe that it will be very difficult to achieve balanced representation on local licensing forums, particularly in the light of the relatively low level of membership.

Clause 16

Whilst we understand the logic of a generic premises licence based on individual operating plans, we do think it would be advisable for there to be a premises licence for on trade and a premises licence for off trade. We believe this would make the regulation of the licensed trade a lot easier, both now and in the future.

Clause 20

We are extremely concerned about the proposed extension of neighbour notification to 50 metres. In certain locations this could involve an immense administration burden on licence applicants, one that is quite disproportionate to the scale of the benefit.

Clause 21

We cannot see the justification for the introduction of a law which allows any person to object to an application for a premises licence. This could foster the birth of “professional objectors” being people who are basically anti-alcohol and who are quite unwilling to discriminate on the merit of particular applications. We think there needs to be the introduction of relevant objectors being people whose personal circumstances dictate an interest in the consequences of a licence grant or refusal.

Clause 25

We understand the logic of attaching additional conditions to the grant of some premises licences and we broadly support that principle. However, we think that clarity is required here. The requirement for additional conditions should be assessed on the basis of the type of premises being operated rather than by, say, the hours of opening. Perhaps this can best be explained by an example. We operate the World’s End Bar in Edinburgh’s High Street which is licensed until 1.00am. This gives Edinburgh tourists the opportunity to have a late night drink in a quiet bar where they can chat and relax. There should be no obligation or mandatory requirement for door stewarding or CCTV (for example) at a pub like the World’s End whereas there could well be a requirement for such additional obligations to be imposed on a nightclub trading during the early hours of the morning, where queues form at the door and incidents can occur which affect the immediate neighbourhood.

Clause 27

We strongly agree with the SBPA view that there needs to be clarity on the definition of minor variation. Perhaps this is something which could be determined by the National Licensing Forum from time to time?
Clause 48

We believe that all operating plans must be consistent with the terms of planning consent obtained. A premises licence should not be granted if the operating plan is at variance with the terms of the planning permission.

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 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.

We do not agree with the SBPA point that the transitional process should be hurried through as quickly as possible. It is clear from the experience in England and Wales that licensing boards are struggling to cope with the workload. We would envisage a transitional period of three years from the date of implementation of the Act. During the three year period all owners of licensed premises in Scotland would apply for a premises licence on the date on which they would have otherwise applied for a renewal of their existing three year licence. At that point the premises licence would be granted but the hours of trading would not be changed from existing hours until the third anniversary date of the introduction of the Act. For example, if the date of enactment is 1 January 2008, any changes in hours of opening would not take effect until 1 January 2011. Such a system would be fair and equitable throughout the length and breadth of the country. If the transitional period is unduly compressed and time is not taken to properly assess the operating plans of all licences at the start of the process, the repercussions in years to come will be very significant.

Clause 82

We agree that personal licence applicants should be holders of prescribed licensing qualifications and we also agree that every licensed premise should have at least one member of staff on duty at any given point of time who is the holder of a prescribed licensing qualification. We believe that would be sufficient as the licensed trade employs a highly significant number of part-time staff many of whom are students or young foreign visitors to our country. It is clearly not practical for part-time staff with backgrounds of this type to obtain an accredited licensing qualification before the start of their employment.

Clause 122

We agree with the SBPA view that the owners of premises whose licence has been suspended should have the right to continue to trade until such time as an appeal against the decision has been determined. If this Clause is not amended accordingly, staff will unnecessarily lose their jobs and creditors to such businesses will be left in a state of limbo. It is also a breach of natural justice principles for penalties to be imposed before guilt is proven through the full process of law.

Clause 138

We strongly disagree with the SBPA view that the presumption should be in favour of children being allowed into licensed premises (on trade). We agree with the statement in the Policy Memorandum that licensees should think carefully before “opting in” to children and we also believe that any presumption in favour of children would be quite contrary to licensing objective 4(1)(e).

Belhaven takes the view that on licensed premises are targeted at adults and that children should only be allowed in under special circumstances which will be related to the consumption of food. Most adults who frequent pubs would not welcome a significant increase in the number of children in pubs, unless dining and accompanied by adults who are supervising them.
Schedule 3

The whole issue of irresponsible drinks promotions needs to be re-assessed. Belhaven has always strongly supported making mandatory a set of guidelines on this subject. We suggest that the National Licensing Forum should issue on an annual basis an appropriate “rule book” and any licensee found to be in breach of these regulations would be subject to censure.

Indeed, when giving evidence to the Nicholson Committee Belhaven suggested that the National Licensing Forum should adopt the BBPA guidelines on sensible promotions and make these mandatory throughout the country. We can understand that the NLF may want to prepare and publish its own regulations on this controversial subject matter but the BBPA guidelines and similar documents from other trade organisations are certainly worth using as a basis to work from.

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.

We also believe that minimum prices should be set for premises whose main focus of business is selling alcohol for take home consumption. It is not fair to concentrate promotional restrictions exclusively on premises where alcohol is consumed. Much of the trouble on Scottish streets is caused by youngsters (under the age of 18) who have relatively easy access to heavily discounted alcoholic drinks sourced from off licences or grocers. Indeed, on page 6 of the Policy Memorandum the Scottish Executive refers to research which concludes “the most common source of alcohol for these youngsters was a small licensed grocer or corner shop, with 33.2% having purchased alcohol from one of these outlets”. This is clearly a major issue.

Belhaven understands that it is not easy for legislation to be introduced which would restrict off trade retailers from engaging in discounted promotional activity. Nevertheless, we feel that the Scottish Executive has to incorporate some measures in the Bill to prohibit the irresponsible retailing of alcohol to youngsters through off trade channels. We see no reason why the focus of attention should be exclusively on the pub trade where proof of age cards are currently widely used to prevent the sale of alcohol to persons under the age of 18.

We believe that the Scottish Executive should consult with Whitehall to find a common UK approach to the regulation of alcohol prices in both the on and off trade. We appreciate that Resale Price Maintenance was ended about 40 years ago but there is growing feeling in our country that alcohol products should be price regulated and, after all, alcohol is a licensed product. Currently, the UK government sees fit to ban retail price variation on products such as postage stamps, TV licences, gun licences and road fund licences. Controlling the price of alcohol would be a lot more controversial but would be a very direct way of tackling the whole question of irresponsible promotion of alcohol the abuse of which has very serious consequences for both the user and the community.

Schedule 3 – Section 4 (3)

We think it would be much more straightforward to change the wording of the above section so that it reads as a positive rather than as a negative. We think it should say that “the premises manager is not required to be on the premises at the time of any sale”.

Schedule 3 – Section 5

We do not understand this section. The wording is very confusing. Surely you do not mean that each and every sale of alcohol should be supervised by the holder of a personal licence. This is
clearly impractical in all types of licensed premises, but in particular in the grocery trade where the sales are effectively made by a checkout assistant.

I hope these comments are helpful.

Stuart Ross
Chief Executive
Belhaven Group plc
9 May 2005

SUBMISSION FROM BIGGART BAILLIE SOLICITORS

We act on behalf of BP Express Shopping Limited ("BP") who previously instructed us to respond to the Licensing (Scotland) Bill: A Consultation on Liquor Licensing. Our clients have now instructed us to comment on the drafting of Section 115 of the Licensing (Scotland) Bill.

As presently drafted Section 115 makes garages ipso facto excluded premises. Given the number of such premises already licensed by local authority licensing boards and the fact that there was no recommendation in the Nicholson report to exclude such premises altogether from the licensing process it would appear that as a result of the drafting of Section 115 (4) in particular the Section goes too far. The deletion of the word 'primarily' in Section 115(4) would result in there remaining a discretion with licensing boards to consider whether such premises in their area would be appropriate for a licence and obviate the difficulty that the clause as currently drafted would create as regards premises which already hold a licence under the current legislation when the new legislation comes into force.

We trust that you will take these matters into account. If you wish us to provide any additional information please let us know.

Alison Grant
Partner
Biggart Baillie Solicitors

SUBMISSION FROM BRITISH HOSPITALITY ASSOCIATION

As you know, the British Hospitality Association (BHA) is the national association for the hotel, restaurant and catering industry. The BHA has been representing the hotel, restaurant and catering industry for over 90 years. Some 3,000 establishments in Scotland, across all sections of the industry, are represented by the BHA – not just group-owned properties, but also hundreds of individually owned hotels and restaurants. BHA have fully supported and endorsed the SBPA submissions to the committee and these, are in effect, on behalf of both organisations.

I have been reading with interest some of the submissions to your Committee and would like to stress the importance of moving from the current seven types of licence for a premises to just a single premises licence as proposed by the Licensing (Scotland) Bill.

As a legal practitioner, with over 30 years experience in this area of work, I can say that one of the great mischief's of the 1976 Act has been the need to choose a type of licence and the requirement to obtain a section 23 certificate from planning saying a particular premises has planning consent for a particular kind of licence. Whilst simple pubs, restaurants and hotels are often easy premises to categorise others such departments stores, the new Museum of Scotland, the National Galleries, conference centres and such like are not.

Even Off sales premises can vary from specialist wine merchants, though chains of off sales units, visitor centres, shops selling minute miniatures of whisky, distillery visitor centres, take away food outlets, etc …
There is a great need for flexibility to meet a public and business need and that would be achieved with a premises licence and an operating plan. A plan which sets out the detail of the particular business and its operating hours etc and will provide the "horse for the course". In most cases the operating plan will resolve the type of anxiety generated in locality where say an application for a Public House licence has to be made where all that is envisaged is a rather nice restaurant with the expected cocktail bar. A restaurant may well have local support whereas a pub as such would not. At present there is a need to apply for and publish an application for a full public house licence.

In recent times an informal expression the "hybrid" premises has evolved and has done so with considerable success in Edinburgh and Glasgow

In its simplest form, hybrids are licensed premises which offer a cross between a nightclub and pub and/or restaurant environment. Often with a dance floor, state of the art sound and lighting and DJ’s. Sometimes where other entertainment is on offer, for example the Opal Lounge in Edinburgh with an enviable international reputation, City/Sportsters hybrids in Perth and Edinburgh. Some people describe "hybrid" as the modern word for a twin scene, food, drink, sport, entertainment and conference facilities or multi-purpose entertainment venue.

A description of the Opal Lounge taken from its website expresses the breadth of activity undertaken on the premises:

"Opal Lounge Fabulous music is central to the Opal Lounge experience whatever the time of day, and our resident DJs - assisted by an outstanding music system - provide a chilled soundtrack for those long laid-back afternoons. As day turns to night and thoughts turn from eating and relaxing to cocktails and dancing, so Opal provides the ideal ingredients for a decadent evening experience. Through the week, a selection of highly-respected residents lay down a soulful soundtrack, while the elegant surroundings and exclusive drinks offers place Opal firmly at the cutting edge of the city's late-night scene. Open until 3am, 7 nights a week, Opal nights will appeal to those who appreciate that little bit extra. A city centre destination like no other. Casual yet stylish, laid back yet vibrant, Opal Lounge is the venue of choice for Edinburgh’s eating, drinking and late-night scene. At Opal Lounge, we pride ourselves in exceeding customer expectations and are dedicated to setting new standards in the hospitality industry."

There are now many hotels running significant bar and function facilities with ancillary bedrooms and on the other hand many “pubs” are actually classified and need to be such as hotels because they have a few bedrooms. There are also “restaurants with rooms” which again need to be classified as hotels. Student accommodation and hostels running as Hotels but really not and so on in practice there many similar anomalies.

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.

I am happy to amplify or provide other information as needed but I would urge the Committee to support the new proposed regime and move away from the current system which imposes unnecessary and often meaningless distinctions in the current licensed environment and which has proved to be a restriction on trade and on the ability of our industry to meet the ever changing and evolving needs of its customers.

John Loudon
Secretary, BHA Scotland
4 May 2005

SUBMISSION FROM CALEDONIAN MACBRAYNE

Having now had an opportunity to study the draft Bill and discuss the issue with Mrs. Jacqueline Conlan of your drafting team we would like to draw your attention to some significant problems with the implementation of the requirements of the Bill as it applies to passenger ferries. To supplement
this evidence we enclose a copy of our letter of 26th August 2004 sent in response to the consultation document.

1. The Bill includes vessels within its definition of “premises”. This is clearly impractical as an application for a premises license requires the submission of various documents including a planning certificate and a building standards certificate. Neither of these applies to vessels and could not be produced. We consider it unworkable to consider a building and a ship as one and the same. There are too many basic differences between the structure and fabric of buildings and ships as well as the various different legislative and other requirements and certifications that apply to each.

2. Due to work patterns and duty rotas on board vessels that operate passenger ferry services it is not possible to identify a named individual to have responsibility for the premises 12 months of the year. Our crew generally work a two weeks on, two weeks off rota with additional holiday allowance. When off duty the crew member does not carry any responsibility for his duties. There would be significant issues with trade unions if added responsibility were to be considered for crew members while off duty.

3. Clause 8 of the Bill suggests that a vessel should be licensed through the Board where the vessel “is usually moored or berthed”. In some cases vessels’ operations mean that they do not have a regular base and are required to operate in up to five local authority areas. In trying to present a consistent and uniform service to customers we are concerned that local anomalies and variations of application could lead to different service offers on different vessels. Variations could potentially be applied to the same vessel if she is deployed outwith her normal operating area.

4. The applicability of the powers of entry, as stated within the Bill, must be rigorously checked in relation to maritime operations. We are aware of memorandums of understanding between the MCA and Environmental Health Officers, and between MCA and HSE which implies that any additional bodies introduced to monitor on-board activities would require a similar agreement. Under whose jurisdiction would enforcement fall should an incident occur on board a ship while outwith the area of responsibility of her particular licensing board?

5. By bringing vessels under the jurisdiction of local licensing boards, this implies that gaming machine permits and approvals will no longer be dealt with via maritime arrangements. Again, any local limitations and/or conditions may lead to a restriction on our ability to provide a flexible service.

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. We would argue that this would be counter productive and would act against the primary aim of the Bill which is to promote a more relaxed and socially responsible attitude to the consumption of alcohol. We would not be able to control effectively consumption on board ferries where the passenger brings his own drink aboard in the form of a carry out. Also, denying or restricting alcohol sales on board a domestic ferry while leaving trains unaffected would be confusing to the customer and do little in the drive towards an integrated standard of transport service within Scotland.

In conclusion, we believe that we maintain a high level of service on board our ships through responsible management and proper control. We urge caution in attempting to extend shore based procedures and legislation across to vessels which operate under a completely separate legislative regime.

W L Sinclair
Managing Director
Caledonian Macbrayne Limited
27 April 2005
ANNEXE A

26th August 2004

The Licensing (Scotland) Bill – A Consultation on Liquor Licensing

We refer to the above consultation document and thank you for the opportunity to comment upon its content.

Caledonian MacBrayne takes great pride in its safety record which is among the best throughout the shipping industry. Our staff and passenger safety procedures recognise the potential danger to health and safety from the consumption of alcohol and we have always taken great care on our vessels to ensure that any such risk is minimised. Preventing “crime and disorder” and “public nuisance” is part of our current on-board safety requirements.

In this regard, Caledonian MacBrayne has recently introduced a revised Drug & Alcohol Policy for all employees which leaves staff (and our customers) in no doubt as to the Company’s determination to eliminate this issue as a source of concern.

The Masters on our vessels take this responsibility extremely seriously and pay particular attention to on-board behaviour. They recognize that an unruly passenger is not only a danger to themselves but to all others on-board. This philosophy is encouraged within all staff members, both on the vessels and ashore.

We have taken a number of steps in recent times which are relevant to public health and safety.

We have re-focussed our on-board retail offers to provide food in areas previously designated as “bars”. We introduced a “no smoking” policy for all internal passenger areas several years ago. We have introduced areas on our vessels dedicated to the safety and entertainment of children. The sale of alcohol to under-18s is strictly prohibited on our vessels and we do not participate in any form of alcohol promotion which could be associated with binge drinking.

Finally, in order to reinforce our commitment to provide a professional alcohol service, we are actively pursuing a training programme for on-board customer-facing staff which will include either the “Scottish Licensees Certificate” or “Servesure.”

We endorse and support the core licensing principles contained in the proposed Licensing Bill, which are:

- The prevention of crime or disorder;
- The promotion of public safety;
- The prevention of public nuisance;
- The promotion of public health; and
- The protection of children from harm.

Additionally, we endorse the intention to address the following matters:

- No-proof, no-sale.
- Irresponsible promotions.
- Access by children.
- The desire to have an overarching national framework.
• The requirement for staff training.

However, while generally supporting the aims and objectives of the Bill, we do have some very real concerns regarding the apparent intention to extend the scope of the licensing system to include “passenger ships and boats journeying between points within Scotland” (Question 43).

We would outline our concerns as follows:

1. We understand the great public concern surrounding incidents such as the Marchioness disaster in 1989 and we note Lord Justice Clarke’s comments contained in your consultation paper:

“If we are to retain liquor licensing laws and require premises to be licensed to sell alcohol, then the reasons that commend themselves to require such premises on land to be licensed seem to me to apply with at least equal force in respect of vessels. Indeed it might be said that safety concerns demand even higher standards for those in charge of serving alcohol on board boats.”

We agree with Lord Justice Clarke’s premise. We also agree with the UK Government’s interpretation of his comments that they relate to those ships and boats which essentially provide a mobile party.

Clearly, the vessels operated by Caledonian MacBrayne do not fall into this category. The services operated by Caledonian MacBrayne are recognised by the Scottish Executive and European Commission as being of a genuine lifeline nature and could in no way be compared to “river trips and coastal excursions.”

We, therefore, cannot see why, in Scotland, the scope of the licensing system should be extended to include passenger ships and boats journeying between points within Scotland. We believe that this is unnecessary and is aimed at the wrong target group.

2. We note that trains are to remain exempt from the proposed scope of the Bill for a variety of reasons, key among which is the fact that a train can travel through many licensing districts during a journey. Another factor was the absence of major problems in recent years.

We are not aware of their being “major problems” in the Scottish shipping sector, particularly on the services operated by Caledonian MacBrayne. We would also respectfully point out that many of our services travel between two different Licensing Board areas and, in some instances, the routes can take the vessel through several Licensing Board areas.

Given this, we would contend that our services should be treated the same as train services and to remain exempt from the scope of this Bill.

3. The safety of passengers and crew is already legislated for via existing maritime agencies and we can see no merit in the imposition of additional legislation.

We also have a number of concerns relating to the practicality of what is being proposed in the Bill.

a) Premises licences require a ‘Home Port’ to be stated. As noted above, several Caledonian MacBrayne vessels provide lifeline services between two distinct Licensing Boards and are, on occasions, required to alter their normal route due to weather, mechanical breakdown, temporary relief cover etc. These alterations are often made at short notice and have the potential to affect operating hours. The consultation paper does not appear to make provision for such eventualities.

b) Due to the crewing arrangements employed by Caledonian MacBrayne, personal licences would need to be issued to 2.2 persons per vessel (at least).
c) If vessels were licensed would certain areas have to be designated for the sale of alcohol? This would be extremely difficult to achieve as all passenger areas on-board the vessels must be available to all passengers in the event of ‘an emergency’. We would find it extremely difficult to restrict areas to certain passengers on the grounds of age if that area had been designated a key ‘muster station’. Would the whole vessel be licensed?

d) Fire & Safety, as proposed within the Nicholson report, is already stringently monitored on-board vessels via existing legislation and official maritime bodies. Maximum passenger numbers and fire equipment are dictated within existing legislation. Additional requirements from an additional third party legislative body would be confusing and could lead to contradictory requests.

e) Police jurisdiction stops at the water’s edge. The consultation paper proposes in chapter 7 that the powers of the police should be extended and that Liquor Licensing Standards Officers should be responsible for monitoring compliance with licensing legislation. There may be potential for conflict with the role of the maritime bodies and the ship’s Master.

In conclusion, we believe that, while well-intentioned, the proposal to extend the scope of the licensing system to include passenger ships and boats sailing between two points in Scotland is a step too far.

The proposal as it stands does not specifically target those vessels which are the primary cause for concern and, as a result, lifeline services, such as those operated by Caledonian MacBrayne, have the potential for inclusion despite being inappropriate targets. Further, the proposed Bill fails to recognise the practical difficulties Caledonian MacBrayne services share with train services in terms of implementing the proposals contained in the Bill.

Caledonian MacBrayne respectfully suggests that the proposal to extend the scope of the licensing system to include passenger ships and boats sailing between two points in Scotland be dropped or extensively revised to focus solely on those ships and boats which essentially provide a mobile party, in line with UK Government thinking.

W L Sinclair
Managing Director

SUBMISSION FROM CAMRA

Please accept the following as the views of CAMRA, The Campaign for Real Ale on the Licensing (Scotland) Bill. CAMRA is a consumer organisation with over 75,000 individual members, and campaigns for choice, quality and value for money.

CAMRA believes that as the vast majority of people in Scotland drink sensibly, the licensing system should be as free from restriction as possible.

CAMRA further believes that well run community public houses are unlikely to contribute to problems of disorder or public nuisance. Licensing bodies should therefore be able to focus enforcement efforts on large city centre drinking establishments.

CAMRA Supports:

- Replacing the current system of permitted hours with a more flexible approach that will lead to varied closing times.

- The setting up of local fora and a National Licensing Forum and believes that both should include consumer representation.

- The retention of Licensing Boards.
Premises Licences:

- CAMRA is calling for a system of Grandfather rights, which would ensure licensed premises do not have to reapply for existing rights. This would substantially reduce the risk of delays during the transitional period by reducing the workload of Licensing Boards. It would also be against the spirit of the Bill if consumers were faced with less choice, rather than more as a result of Licensing Boards removing existing rights.

- The requirement to hold a hearing to consider every application, particularly during the transitional period, may lead to an unmanageable burden on Licensing Boards. In the absence of any valid objections CAMRA questions whether a hearing is necessary.

- Allowing premises licences to remain in force indefinitely, provided the conditions are met, will have the beneficial consequence of reducing the workload of licensing boards and licensees alike. Furthermore, it will enable Licensing Boards and Licensing Standards Officers to focus on the small number of licensed premises that may give rise to problems.

Licensing Hours

- The abolition of statutory permitted hours is a positive step, and will contribute to a reduction in public disorder and nuisance. In the longer term CAMRA also hopes that a flexible approach to hours will facilitate a move to a more relaxed drinking culture.

- The Bill will create a situation where the hours for particular premises are assessed individually. This is a sensible approach and one, which CAMRA hopes, will favour well run community public houses.

- While the Bill is likely to lead to later opening of many premises, CAMRA does not believe the impact will be as great as that suggested by media reports. The likelihood is that the vast majority of licensed premises will stick to their current hours, with the exception of weekends where they may seek to open longer to meet consumer demand.

- The existing prevalence of extensions granted to city and town centre licensed premises means that in many city and town centres there is little if any scope for premises to open later.

- Retention of the 15 minute drinking up time is important, as it will facilitate the orderly dispersal of persons from licensed premises. However CAMRA considers that the decision not to increase the drinking up time from 15 to 30 minutes is a missed opportunity. A longer drinking up time would avoid people being encouraged to rush their final drink.

Overprovision

- Proposals on overprovision do not adequately distinguish between styles of operation, or recognise that in some instances the addition of a smaller well-run community orientated licensed premises may reduce problems of nuisance and disorder.

- CAMRA believes that many town centres, which suffer from alcohol related disorder and nuisance, would benefit from the opening or reopening of traditional community orientated pubs that attract a mixed age clientele. The risk of an outright ban on new premises is that those catering to an older clientele would be unable to open or reopen meaning that many high streets will remain a no go area for mature, sensible drinkers.

Occasional Licences

- CAMRA welcomes the retention of the Occasional Permissions and Licences legislation in the new Bill. This legislation is vital in enabling voluntary organisations to run events and has not been the cause of any major problems.
The Occasional Licences legislation is important to CAMRA branches as it enables them to run many smaller beer festivals in Scotland. These festivals are run by CAMRA volunteers and promote small local brewers, local heritage and tourism.

CAMRA supports the decision not to require voluntary organisations to supply a personal licence holder. Such a move would have been problematic for voluntary organisations both in terms of cost and time.

**Licensing Standards Officers.**

- CAMRA hopes that the new Licensing Standards Officers will be able to offer support and advice to licensees, particularly during the transitional period.

**Training**

- CAMRA supports mandatory training for Board members. Training will lead to greater consistency in the decisions made by licensing boards.

- As a consumer organisation CAMRA campaigns for the highest standards in public houses and would therefore support appropriate training for permanent staff. However CAMRA believes an exemption for casual staff would be necessary.

**Irresponsible promotions**

- CAMRA agrees that irresponsible promotions need to be tackled. In particular CAMRA supports proposals to end two for one offers that can encourage people to drink more than they would otherwise do. Likewise CAMRA supports the proposal to end promotions that allow the unlimited supply of alcohol for a set price.

- CAMRA seeks clarification on whether the ban on promotions based on the strength of any alcohol would also prohibit promotions on the basis of low strength of a product as part of a responsible drinking message.

Jonathan Mail  
Head of Policy and Public Affairs  
April 2005

**SUBMISSION FROM CITY CENTRE TENANTS AND RESIDENTS ASSOCIATION IN PERTH**

I am writing to represent the members of City Centre Tenants and Residents Association in Perth.

We recently objected to Perth and Kinross Licensing Board regarding an application for another very large pub in Perth. I will put forward a view of overprovision in Perth on April 19th at the Licensing Board Meeting. It will be an argument which makes the point that quality of life comes before market forces.

With help from Ms A. McCallum at the Perth and Kinross Tenants and Residents Federation Office in Perth, I have looked at the proposed new Licensing (Scotland) Bill on your website. At the present time we have a good opportunity to submit arguments/suggestions and innovative ideas because the present law on this issue is full of holes. If a ‘more modern’ licensing system means ‘simplification’ and ‘flexibility’ (first page of new Bill) we may end up with more alcoholism, drunkenness, loss of amenity and maybe there will be more risk of licensed premises failing through overprovision. We need a robust Bill. We don’t want failed businesses; we want quality pubs, clubs and restaurants managed to a high standard, and licensing laws which properly address overprovision. The new Bill must have teeth so that objectors have something to get their teeth into.

Having studied it briefly, the new Bill seems good to me although I am just learning about the subject. I think that the new ‘duty to assess over-provision’ is good, but will Local Authorities get
guidance on how to assess and measure over-provision? E.g. What statistics will objectors need to find to prove overprovision?

Another point is that I can’t find any reference to local groups/associations who would have an interest, even though Community Councils are mentioned. We are a constituted registered tenants association in the voluntary sector representing tenants regarding housing and related issues and we have as much right to be mentioned as Community Councils. We have a statutory right to be consulted on housing and related matters. Our Federation body is mentioned above.

The last point I want to make is to clarify terminology. Is the ‘grounds for objection’ (Perth and Kinross Licensing Board Paper) the same as the ‘Grounds for Refusal’ in the new Bill? Have the numbers changed from Section 17 1 a-d in the 1976 Bill to Section 22 a-d in the new Bill? Also, I can’t find the section which says who can object – is it Section 20? I may be mixed up, at the same time I think these points should be easily understood when reading the Bill.

In conclusion, it would be helpful if overprovision was clearly defined (and measurable) in the new Bill so that there is no confusion and no difficulty for applicants, objectors and licensing boards themselves.

Lynne Palmer
Secretary
City Centre Tenants and Residents Association in Perth
13 April 2005

SUBMISSION FROM DIAGEO

This is a submission on behalf of Diageo Great Britain in response to the publication of the Licensing (Scotland) Bill.

Principles behind the introduction of the Bill

Diageo Great Britain welcomed the publication of the Nicholson Report in August 2003, and the five licensing principles on which its recommendations were based. As a brand-owner - with no retail outlets - not all parts of the draft Bill are relevant to Diageo. However we applaud the Bill’s primary objective of simplifying and modernising the current legislation. Diageo recognises that licensing reform, leading to a flexible and modern system, is a vital element of the fight against alcohol misuse, and we have been pleased to note the emphasis on tackling the problems caused by the minority of binge and underage drinkers, without restricting the freedom of the vast majority of people of who drink responsibly.

Consultative processes

Throughout the original consultation process, the White Paper and now the Bill, we have been keen to engage with the Executive and other stakeholders to play our part in developing licensing legislation that is fair and balanced. We believe that the extensive formal and informal consultation undertaken by the Executive during the development of the Bill has been constructive, as it has allowed all stakeholders to contribute to the debate.

Key issues for Diageo- irresponsible promotions

Diageo welcomed the recommendation that steps should be taken to address irresponsible retail promotions. We agree that irresponsible promotions, encouraging excessive and harmful consumption of alcohol, have no place in the Scottish licensed trade (or elsewhere).

As we have outlined in previous submissions, we believe that the best way of tackling irresponsible promotions is through:

- national guidelines setting the highest standards of retail practice
- the widespread adoption of industry best practice
comprehensive training for all involved in the licensed trade.

Accordingly, we are pleased to note that the provisions in the Bill relating to irresponsible promotions are built largely on existing industry best practice in this area.

Guidelines on irresponsible promotions- impact on industry

However, we do have a concern about the provision in schedule 3, (B/3/c) which precludes any promotion that:

“(c) involves 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,”

Diageo is entirely opposed to any kind of irresponsible discounting as a promotional mechanism and supports attempts to tackle this problem. However, this provision goes further than the position on price promotions envisaged in Sheriff Principal Nicholson's Report:

“We for our part have no fundamental objection to price discounting, and price promotions, in principle. …They are consistent with the whole concept of free competition between traders and, more importantly, there is absolutely no evidence to suggest that they bring about any of the undesirable consequences which are associated with the kinds of [irresponsible] promotional activities which we have described”.

“In many instances modest promotions of the kind just exemplified are conducted in accordance with responsible guidance offered by a variety of trade associations”.

In doing so, this provision restricts unnecessarily the commercial freedom of responsible licensees. We believe that the Bill should recognise that responsible licensees can run price promotions, which are entirely consistent with responsible promotional practices. Diageo would therefore urge the Executive to reconsider this provision.

Key issues for Diageo- off-sales

Diageo is concerned to note that the guidelines around irresponsible promotions are not to be extended to the off-trade. We believe that the licensing regime should be applied consistently to both on-sales and off-sales premises, particularly in the area of irresponsible promotions. We welcome the Executive’s commitment to conduct further research into this. Diageo hopes that the Executive will, after consultation with the licensed trade and Alcohol Focus Scotland, extend the provisions concerning irresponsible drinks promotions to off-licences and supermarkets.

Key issues for Diageo- staff training

Diageo has highlighted before how valuable staff training can be in promoting responsible drinking and tackling binge and underage drinking, and we are pleased to see that training continues to be an area of focus in the Bill. Diageo is pleased to see that training will be mandatory both for staff in licensed premises who don’t hold a personal licence and for licensing board members. We were concerned to note, though, that the type and level of training has not been specified. Having worked closely with Alcohol Focus Scotland and other industry partners on the ServeWise programme, and knowing its excellent reputation, our hope is that the Executive will give the Alcohol Focus Scotland ServeWise course accreditation for this purpose. We also hope that the Executive will clarify any ambiguity around casual staff and confirm that all staff working in licensed premises must receive some training.

Key issues for Diageo- tackling underage drinking

Finally, 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. We were also pleased to see that
promotions with appeal to children or young people are to be outlawed by the guidelines on irresponsible promotions.

**Key issues for Diageo- on-trade spirits substitution**

Diageo echoes the concern of the Scotch Whisky Association that the Bill does not include on-trade spirits substitution as a relevant offence. We fully support the position held by the Scotch Whisky Association and hope that the Committee will recommend the bringing forward of an amendment to the Bill introducing a ‘relevant offence’ for on-trade spirits substitution in Scotland, and an appropriate penalty as a deterrent.

I hope that these views will be of use to you in the consultation process. If I, or any of my colleagues, can be of any further assistance, please do not hesitate to contact me,

Allan Burns, Director
Diageo Scotland Supply
22 April 2005

SUBMISSION FROM DOREEN EDGAR

**Late Night Licences in Residential Areas**

**Introduction**

As someone who was born and raised in the west end of Glasgow I have become increasingly concerned about the proliferation of licensed premises and the granting of late night licences in what has always been a residential area. It was my understanding that a key policy of the Licensing Review was to give communities a far greater influence in licensing decisions.

However, having read the Committee Report of 22 March I can state that Tommy Sheridan is completely correct in his assessment that local communities will feel badly let down by the proposed legislation. In particular I was struck forcefully with the following observations.

1. Licensing Boards will continue to have the power and flexibility to decide on the policy they wish to operate in their area. That policy will reflect the wishes of the Local Authority and NOT the wishes of the residents who have to live with the consequences of these policies.

2. Licensing Forums will in no way be representative of local communities. Apart from one forum covering far too large an area (especially in Glasgow), it appears they will comprise mainly of professionals (including those with a vested interest i.e. licence holders).

3. Areas that are saturated just now will be even more so by the time these proposals are implemented and the legislation will not be retrospective.

4. It appears that the financial interests of the licensing trade must be protected regardless of the impact on communities.

The purpose of this submission is to ask the Committee to consider the devastating impact on the quality of life that residents experience when late night licences are granted to premises in the immediate vicinity of their homes.

**Current Policy of Glasgow Licensing Board**

I note that licensing boards “wanted local flexibility” and that the decision as to whether a large area is divided up to represent local interest more effectively will be entirely up to the local authority. The possibility the Glasgow City Council will consider making smaller areas is extremely remote. There are two reasons that I hold this opinion.
1. A main principle of their current policy statement on regular extensions to permitted hours is to “apply consistency” in the granting of licences across the city.

2. There is a wider agenda (backed by the Tourist Board) to turn Glasgow into a 24 hour city with a vibrant night life.

For regular late night extensions the Board currently grants entertainment licenses until 2.00am 7 nights a week in “outlying” areas as opposed to 3.00am in the city centre. They have also declared the Byres Road vicinity to be “city centre”. As a result, that long-established residential area has been swamped with licensed premises, many of which now open until 3.00am despite vociferous objections from local residents and the local councillor, Niall Walker. I understand that one particular club/bar accommodates over 1000 people and it is regularly open until 2.00 or 3.00am. There are many residential properties directly opposite the premises. (As an aside I might also mention that there are absolutely no public toilet facilities in the area, with foreseeable consequences).

Byres Rd has always been a lively area with a few pubs but until recently they operated sensible hours and did not present any major problem to the community. The inauguration of the West End Festival for two weeks in June every year (a positive event in itself) was the beginning of the late night licences being granted, initially only for the duration of the Festival. These licences have now been extended on a permanent basis (with many more being granted) and the current situation is that a residential area is flooded with thousands of outsiders at weekends. These people only visit the area in order to drink until 3.00am and this produces the usual anti-social behaviour that is generated by the “late night economy” i.e. disturbance, graffiti, vandalism, people vomiting and urinating in the street etc.

The idea that people “choose” to live in certain areas and therefore must expect disturbance during the night needs to get knocked on the head. The situation has developed over recent years where late licenses have rapidly multiplied in what have always been primarily residential areas. There are many people in the west end (myself included) who have lived here all their lives. Even if we were to prepare to uproot ourselves from our homes and communities, there are very few areas in Glasgow that we could be guaranteed a quiet life. While recognising the many positive aspects of the River Clyde regeneration project, there are serious concerns as to the knock-on effects of the long-established community in Partick. I understand that other residential areas of the city have also been granted an increasing number of late licenses e.g. Shawlands on the south side of the river.

In my own street, a densely populated residential area, we have one establishment which until last year had a 2.00am licence seven nights a week. Last year a number of residents submitted objections with the result that the premises had to close at midnight Sunday-Wednesday but still had their 2.00am licence Thursday-Saturday, which are the really busy nights as well as the noisiest, (that is “balancing public and commercial interests”, apparently). In March 2005 the licensee tried to get the seven nights till 2.00am again. Despite there being double the number of objections this year, three members of the Board (including the Chairman) voted to restore the 2.00am licence seven nights – fortunately there were another eight members present who voted against that. However, we still have the 2.00am licence from Thursday – Sunday every week with the usual disturbance in the early hours.

I wish also to highlight the difficulty of dealing with “ambient noise” i.e. revellers not necessarily engaging in what would be defined as anti-social behaviour but making enough noise to waken residents in the early hours e.g. taxi doors slamming, people calling out to their friends who are a bit further up the street, having a sing-song as they stagger up the street etc. Many of the problems that residents experience from late night licenses in their area are simply a result of groups of individuals dispersing from the premises during the early hours, under the influence of the alcohol they have consumed. People in that condition are just not capable of dispersing quietly.

My understanding is that the police reports only address what happens inside the premises, how they are managed, whether there are fights, drug-dealing or whatever and whether the licensee has any criminal convictions. These are not the issues that affect local residents. Likewise, Environmental Protection Officers only deal with complaints about the level of noise emanating
from within the premises e.g. loud music. Again, in many cases that it is not an issue for residents. “Prevention of public nuisance” is one of the guiding principles of the licensing policy. Surely residents being woken up on a regular basis in the early hours of the morning by noisy revellers dispersing from licensed premises must count as a “public nuisance”?

**Licensing Board Meetings**

It is my view that the current system favours the licensee in a number of ways.

1. Objectors are required to be totally pro-active e.g. we need to keep scanning the newspapers in order to know about applications. It is my hope that under the new legislation “advertising” will not merely refer to the Press advertisements by the council, but that notices will have to be clearly displayed outside the particular premises.

2. Meetings of the Glasgow Licensing Board are always held over in Shettleston which is hardly convenient for westenders (or other communities). Most people are working or have other commitments. The Board are also unable to guarantee the time that a particular case will be heard. I know of one local resident who was determined to attend in 2004 and ended up having to take three days off his work in order to “speak his objection”.

3. The vast majority of people are totally unfamiliar with the complexities of licensing legislation and would incur considerable expense in obtaining legal representation. Residents should not have to pay out vast sums of money in order to be able to sleep at night. Licensees have the money from their businesses to pay for their own lawyer to advise them and to speak on their behalf.

4. Even trying to obtain information afterwards about the Board’s decision is not straightforward, despite the new Freedom of Information Act. Recently I asked for information on a decision by the Board and was informed that it was only available to those objectors who had appeared in person at the meeting (until after the current quarter). So, as I understand it, those residents who submitted a written objection but were unable to attend the Board meeting are not entitled to any information as to the reasons for the board’s decision until the period of appeal has passed.

I would hope that the Executive will produce a booklet that will explain the process clearly and simply for the lay person and provide access to information. At present, it appears that the only way of getting advice is to consult a lawyer and that is not an option for many people.

**Conclusion**

Many long-established communities were swept away by Glasgow Corporation from the 1960's onwards as a result of housing policies, motorway development etc. The few remaining areas of the city that still retain a sense of community are now under threat from other developments, in particular the late night economy that is encroaching more and more in to residential areas. I know personally of individuals who have moved away from the west end of Glasgow on account of the problems they have experienced from drunken revellers. There is no doubt that there are others and that the number will increase in the future if the current process continues unchecked. To my mind this is totally unacceptable. Given the problems of anti-social behaviour in Glasgow, steps should be taken to build up communities and not to undermine them.

I fully appreciate that in a city the size of Glasgow there is a demand for a “vibrant night life” from various quarters. It is however totally unacceptable for Glasgow City Council to meet that demand by transforming residential areas in to late night economies for people who live outwith the area. I think it is something like 10,000 people that are reckoned to pour in to the Byres Road area at weekends now, according to a recent report that I read.

The city centre or regenerated areas are the place for nightclubs and late night licenses, not in the heart of long established residential communities. I would hope that this proposed legislation will provide protection for the silent majority of citizens who choose a quieter lifestyle and prefer to sleep during the night. Otherwise it will only serve to further undermine confidence in the ability of
The Scottish Executive to address the real concerns of the people of Scotland and the problems that they experience in their own homes.

SUBMISSION FROM DUNDA & WILSON CS LLP

The Licensing staff of Dundas & Wilson CS LLP who deal with many hundreds of licensing applications annually felt it might be helpful to the committee if those at the sticky end of making applications made a few brief comments and suggestions based on our experience on aspects of the Bill.

Section 13 - Licensing Standards Officers

We think that they are to be there for the wider public good as well as to meet specific objectives, that they should be Scottish Executive staff (even if paid for by the industry) and have the flexibility to roam around Scotland as needed. Some Board areas will require more and others only part time access to a single LSO. Scottish based officers should rapidly build up expertise in dealing with a whole variety of situations and be able to use/cross-sell best practice.

Section 21 – Objections and Representations

Section 21 sets out the procedure for objecting to an application. It is our view that “any person” is not specific enough, will give rise to significant administrative and other problems and it should only be “any person with a real and/or material interest or a person likely to be adversely affected by any proposals.”

In addition the potential cost to an applicant (particularly one with a small business) of dealing with “any person” objectors may well outweigh the perceived benefit. Please see S158 of the Gambling Act 2005 for a possible alternative wording.

We see the requirement for neighbour/interested party notification within 50m or 90m being potentially a very expensive and time consuming exercise and believe that the costs of this may not be proportionate to the benefit. A single A3 notice prominently displayed will rapidly become known in most if not all communities. Each Board could also be required to maintain an online database of applications. People would rapidly become aware of this (especially if marketed by the Scottish Executive) and those without direct access to the internet could use facilities e.g. in public libraries. Newspaper adverts are very expensive and wasteful of resource which could be better used on technology.

Section 27 – Application to vary Premises Licence

With reference to subsection (6)(c), it is our view that any “variation of the information contained in the licence relating to the premises manager” would be superfluous as the premises licence would have to be varied each time a new manager were appointed and this is patently unnecessary.

Section 58 - Licensing Hours

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. We deal with a great number of these types of applications on a routine basis and they are an important facility for the public. 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.
Section 115 - Excluded Premises

This section makes garages excluded premises. It would seem unjust to deprive those who currently hold a licence from having a new premises licence and we consider it would be more equitable to allow premises who currently hold liquor licences for petrol stations without issue to continue to do so. 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.

Grandfather Rights

Require to be determined.

There is a need for:

- Business certainty
- Job security.
- Fairness of approach

Consideration must be given to the resource needed in both the public and private sector to deal with large volume of work on transition be it big bang or gradual change. Regard must also be had to the changes being introduced by the Gambling Act 2005 and the impact of the smoking ban. Much of this will blend together to create administrative problems for all concerned not least the requirement on Boards to consult and to have policies on Liquor and Gambling.

Technology

There should be mandatory introduction of a national electronic database for personal licence holders and all their relevant information.

Alterations to the Operating plan

There requires to be more thought given to this aspect and perhaps provide for more flexibility to allow “non-material alterations” to be made to an operating plan without the requirement to make a new application for a premises licence. New applications will involve significant expense and time delays and may stifle future investment. Perhaps alterations should be permitted if they are unlikely, in the reasonable opinion of a licensing board or a person to whom they delegate authority e.g. the clerk, to affect neighbours in an adverse way.

Efficiency

We need to find a mechanism to avoid the current duplication of effort and paperwork involved in making physical alterations to premises with vast numbers of expensive plans being shuffled about between Boards, Councils and others much of which is already in the system. A central electronic filing cabinet, such as those used in legal firms (deal rooms or similar) with electronic and/or paper plans of proposals for each board with all Council departments such as Planning, Environmental health, Building Control, Firemaster and the police being able to input comments electronically and as such visible to all. This would allow for easy tracking of the progress of any application and significantly reduce the current need for paper reports and the constant chasing to find out who has or has not done what.

This is a once in a generation opportunity to improve and requires to be given the force of statute to make it happen. The long term benefits are enormous for all concerned.

We are happy to discuss any of the above and to give practical and constructive input as needed to the process.

The Licensing Team
Dundas & Wilson CS LLP
SUBMISSION FROM DUNDEE CITY LICENSING BOARD

Dundee City Licensing Board ("the Board") broadly welcomes the proposed provisions contained in the Licensing (Scotland) Bill ("the Bill") and is heartened to note that many of the concerns and issues raised by the Board in its reponse to the Consultation Paper on the Bill would appear to have been addressed in the published version of the Bill. However, there are a number of points which have arisen following a study of the Bill's terms and these are as follows.

1. Licensing Hours

In our response to the Consultation Paper, we suggested the retention of the existing system whereby boards can grant occasional extensions to the permitted hours to allow for longer opening on specific days for particular events, e.g. holiday periods, sports events, etc. At the moment, the Board grants in excess of 1,000 such applications per annum. Whilst the concept of permitted hours is to go under the new regime and the hours of opening will be incorporated into the operating plan, it is the Board's view that provision should have been made for the possibility of licence-holders applying for occasional extensions over and above the hours contained in the approved operating plan. It will be virtually impossible for prospective applicants for premises licences to predict at the time of submission of their operating plan when such "occasions" are liable to arise, particularly since the licence is to be granted without limit of time. Section 27 of the Bill does allow for the operating plan to be varied and it is possible that this may provide a mechanism for incorporating occasional extensions, but this seems a rather cumbersome process and the Board can see no reason why Section 64(2) of the Licensing (Scotland) Act 1976 should not be retained in some form or other under the new system. Most boards operate their powers under that section by means of a delegated powers arrangement which is quick, flexible and convenient for licence-holders to make use of. One of the main aims of the new legislation is to simplify licensing boards' procedures to make them more accessible and easier to understand. To make provision for occasional extensions in the manner suggested would surely contribute towards that aim.

2. Grant of Personal Licences

Part 6 of the Bill, which sets out the procedure for dealing with applications for personal licences does not envisage any objections or representations from other than the Chief Constable and even then only on the basis of "relevant offences". The Board think that it is wrong to limit the assessment of someone's suitability to hold a personal licence to whether or not they have convictions for particular offences. Although the applicants for personal licences must of course possess the necessary training qualification, there may be aspects of their conduct other than criminal behaviour which are relevant to their suitability to hold a licence. For instance, in Dundee and a number of other areas, the Finance Department of the local authority has lodged objections to licence applications on the grounds that the applicants are deliberately avoiding paying non-domestic rates and this is something which can reflect adversely upon the suitability of an applicant. The proposed Sections in Part 6 of the Bill should be extended to allow for objection by any person, in the same way that any person can object to a premises licence application. The board would still retain the right to refuse to allow objections to be heard if frivolous or vexatious. The concept of fitness to hold a licence should be retained to allow this to be assessed more generally than just by reference to criminal convictions of an applicant.

3. Board Membership

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.

The Board also think that provision should be made to prevent any person seeking to influence a board member in relation to a particular application and not just applicants as is envisaged under Section 8 of the Bill.
4. Objections to Premises Licence Applications

Section 20 provides for the Chief Constable giving notice to the board of relevant offences of an applicant. Is this to be the extent of his input into the application process or is he to be allowed to take advantage of Section 21 which purports to allow any person to object on any ground relevant to one of the grounds for refusal contained in Section 22(5)? It may be that the Chief Constable would wish to bring information to the board's attention which is relevant to one of those grounds but which does not consist solely (or even at all) of details of any relevant convictions.

5. Notification of Decisions

Section 70(3) and (4) provide that the board must give a statement of reasons for a decision to grant or refuse an application for a personal licence. However, there does not appear to be any requirement to give reasons for any other decisions under the proposed Act, e.g. to grant or refuse a premises licence or a variation of a premises licence, etc.

6. Notification of Convictions of Personal Licence-holder

Section 74 obliges the board to hold a hearing in respect of a personal licence-holder where it receives notice that (s)he has been convicted of a relevant offence and this is confirmed by the Chief Constable. However, Sections 72 and 73 only provide for the courts and the licence-holder giving such notice to the board. What if, for whatever reason, the court and/or the licence-holder fail to give the notification? Is the board not to be allowed to take action against the licence-holder where it becomes aware of the conviction from another source, e.g. a complaint from the Chief Constable?

6. Appeals

Section 122 provides that all appeals (except those to the Sheriff under Section 122(4)) are to be by stated case to the Sheriff Principal. Is the intention that this should follow the same procedure as criminal appeals by stated case from, say, the District Court to the High Court? These involve holding a hearing on adjustments when the Fiscal and defence agent suggest amendments to the stated case to reflect their understanding of the proceedings at the trial stage. Is the board to hold a similar hearing when agents for applicants, objectors, etc. can come along and argue about what went on at the original hearing? This could prove a rather cumbersome process.

As stated above, Section 122(4) allows an appeal to the Sheriff against the suspension of a premises licence imposed with immediate effect. Presumably, the Sheriff will have the power to recall the suspension ad interim pending hearing the appeal in full. However, Section 123(7) says that all decisions of a board are to have effect despite an appeal. This contrasts with the current position that decisions do not take effect until the appeal period/process has expired. Does this proposed new provision not mean that all board decisions will effectively have immediate effect? This would mean that an appeal against, say, the revocation or suspension of a personal licence could not be pursued under Section 122(4), yet in terms of Section 123(7) such a decision would take effect notwithstanding an appeal to the Sheriff Principal under Section 122 and the premises would have to close since alcohol cannot be sold in terms of the proposed standard conditions in Schedule 3 to the Bill whilst the personal licence is suspended. Would it not be more sensible to amend Section 123(7) to say that all decisions do not take effect until the appeal period/process has expired unless the board directs otherwise at the time of the decision concerned? In the event of the board deciding that the decision should have immediate effect, then any such decision could be appealed to the Sheriff under Section 122(4).
SUBMISSION FROM GEORGE ALLAN

I would be grateful if the Committee could consider the following amendments to the Bill. These are put forward as I do not consider that the paragraphs referred to, as they stand, support the 'licensing objectives' fully enough. [The sections of the Bill referred to are numbered as per the Bill 'as introduced'].


Suggested amendment 1
Remove Paras 7[1] & 8[1]

Reason- It is unclear why these section cover on sales only & not off sales as well. A significant amount of binge drinking is fuelled by people starting drinking heavily at home in the evening before they go out & this is encouraged by heavily promoted cut price drinks promotions in off sales. This is particularly relevant to young people who will obtain, or try to obtain, the cheapest drink available. In addition, growing heavy consumption at home is increasing health risks.

Suggested amendment 2
Insert a new section to Paragraph 7 [Pricing of Alcohol]:-

"The price at which alcohol is sold for consumption on or off the premises must not be displayed within the premise or in any place outside the premises, so as to be visible from outside the premises".

Reason- Para 7[2] is not robust enough to meet its objective of reducing encouragement to binge drink. Under the present Para 7[2], a licensee could fix the price of a pint of lager, for example, at £1 continuously & heavily promote this through advertising or on notices outside the premises in order to attract people into the bar. Losses sustained at keeping lager at this reduced price could be offset by raising the price of other drinks slightly [or, in the case of a club, increasing the entrance fee]. This would continue to encourage binge drinking. The suggested amendment would mean that no advertising of the price of alcohol could occur away from the point of sale [either outside the premises or through the press or on billboards. It would reduce the pressurised competition between licensees, which the retail trade has stated is not in its interest, & would strongly discourage binge drinking.

I would be grateful if the Committee could give these amendments its serious consideration.

SUBMISSION FROM CITY OF GLASGOW LICENSING BOARD

The Board would offer the following comments on the provisions of the above Bill :-

Section 5:
Licensing Boards: It is considered that the proposed membership of the new Licensing Board is too small for a city the size of Glasgow. In particular, 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. In this connection the Board is aware that the Scottish Executive may consider that the opportunity to operate via 'Divisions' could resolve the difficulty. However 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 co-ordinated 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 Boards currently operate the costs of operating the Boards are considerably higher.

Section 7:
Duty to assess overprovision: There remains substantial concerns regarding the requirement in the Bill for Boards to pro-actively assess overprovision within their area. 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. The Board's assessment of over provision will require to be included in the new 3 year policy statement. There is a concern that any extensive exercise the Board may carry out in order to assess over provision could be rendered pointless if successfully challenged on appeal in determining an application for a premises licence - on the basis that the Board should have considered an alternative locality instead or did not properly compare 'like with like' when assessing overprovision of premises of a 'particular description' within the locality. The Board would wish to emphasise its concerns that the Bill as presently drafted does not make a distinction between rural and urban areas, and that a 'one size fits all' approach to the assessment of over provision is not therefore practical. It may be far easier in rural areas to identify separate and distinct localities rather than in cities and areas with large conurbations. The Board understands that it is intended that Ministerial Guidance will be given to Boards on how to carry out an overprovision assessment. The Board would ask that any guidance given is not rigid and of the 'one size fits all' variety for all Boards in Scotland but is such that allows for localised decision making as to the determination of appropriate localities.

Section 10:
Local Licensing Forums: 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. 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.

Section 13:
Licensing Standards Officers: It is important to clarify whether or not in the course of their duties, Licensing Standards Officers are to act as agents of the Board or whether they are separately and distinctly officers of the Council, similar to Environmental Health Officers, who provide reports to the Licensing Boards but are not supervised or directed by the Board or the Clerk to the Board. 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. It is however accepted that close association with the Board may raise concerns regarding a lack of impartiality and thus also introduce difficulties of compliance with the rules of natural justice and the terms of the European Convention on Human Rights on certain occasions, such as when the Licensing Standards Officers are seeking a review of a premises licence. Clarification is still required on the precise nature of the duties which the Licensing Standards Officers will be expected to undertake. Although to be enforced under separate legislation, it has been stated that Licensing Standards Officers are to be responsible for the enforcement of the smoking ban in licensed premises. It is this Board's opinion that to create a level playing field between licensed and unlicensed premises, enforcement of such legislation should be the responsibility of, for example, Environmental Health Officers. The Board
also considers that in general terms Licensing Standards Officers should not be viewed as an alternative to police officers, but as a dedicated and useful addition to the services already provided by the police.

Section 20:
Notification of Applications: It is accepted that responsibility for giving notification of an application to certain individuals / bodies should lie with the Clerk to the Board. However there is a concern as regards notifying ‘each person having a notifiable interest in neighbouring land’. The precise description of those to be so notified has yet to be determined via regulations. However identifying the appropriate individuals could be an unduly onerous if not impossible task for Board officials leaving the Board open to criticism, if not Court action, for failure to properly notify. It is quite likely that persons having an interest in land such as landowners or persons with part ownership of the land may live in a different place or may be permanently or temporarily resident abroad; a requirement to trace and notify such persons would be extremely difficult. In terms of the Bill as drafted it is assumed that notification will simply be accompanied by a copy of the application form and not also by a copy of the operational plan and detailed plans of the premises. There could also be a significant cost to the Board in sending out high numbers of notifications to all those with a notifiable interest in neighbouring land and this must be taken account of in setting appropriate fees.

Section 21:
Objections and representations: It should be clarified whether or not "any person" includes the Chief Constable or any member of the Council, or indeed the Council as a body. There is a concern that allowing "any person" to object to an application could place an unduly onerous burden on Licensing Boards and the entire application process, should there be hundreds or perhaps thousands of objectors to an application perhaps from well outwith the Board area far less the locality, and perhaps as a result of an organised campaign. Ultimately such objections may have little relevance but the objections would still require to be processed and considered unless they could be clearly categorised as 'frivolous or vexatious' and, in the event of an appeal, the objectors would be entitled to be part of that process and to be present at any hearing to adjust a stated case. The Board would suggest that there should be a geographic restriction on the right of a person to object such that the objector must reside in the area of the Board or within a reasonable distance from the authority's boundary - the 'reasonable distance' to be determined at the Board's discretion in the first instance.

The Bill does not seem to give an objector the right of appeal although it is understood that the Scottish Executive will address this. In the event that objectors are not given a right of appeal against a decision of the Board, concern is raised regarding the Bill's compliance the European Convention on Human Rights.

There appears to be no provision giving the police a locus to comment on matters generally such as the origins of finance for the licence application being made or to comment on any other matters known to the police which they consider relevant, as happens just now, but which have not resulted in a conviction. This is of great concern to the Board.

Sections 27 & 28:
Variations of Premises Licences: There is a concern that a “minor variation” as defined must be granted by the Board without further enquiry. Minor variations are stated to include "any alteration or proposed alteration of the internal layout of the premises". There is a concern that this will include changes which could dramatically alter the character of the licensed premises which under current legislation would have required a new application far less be recognised and categorised as 'minor'. If premises are to be altered to include a dance floor - that could dramatically change the character of premises and affect adjacent residents etc - and yet this is to be categorised in future as a "minor variation" which is to be automatically granted. It is thought that this provision is no better and is in fact worse than the current requirement for approval of alterations etc as contained in section 35 of the 1976 Act - such a process allowed for approval of minor alterations etc whilst allowing for an assessment of those that could not be so approved and which would require to be the subject of a new application and a consultation process. Even a process which would allow the Board to determine internal alterations as 'major' requiring a full variation and presumably advertising would be better.
Section 34: Application for Review of Premises Licence: The Bill seems to give any person the ability to apply for a review in respect of any licensed premises. Clarification is required as to whether or not this includes failed objectors who would be entitled to almost immediately (and perhaps continually) apply for a review of that licence. If a number of individuals apply at different times for a review how will the Board be able to determine that each or any application is 'vexatious or frivolous'?

Section 48: Certificates of Suitability: The requirement to obtain certificates from the planning, building standards and environmental health authorities essentially replicates the provisions of the 1976 Act. However as presently drafted this section could present a practical difficulty for those authorities in that the required certificate only needs to confirm suitability of the "proposed use as licensed premises". Presently these authorities work with legislation that is 'compatible' with existing licence types - pubs, hotels, restaurants etc - and so they may therefore be able to certify use as licensed premises in accordance with current terminology but may not address suitability in terms of the proposed operating plan. It is strongly recommended that this provision should be amended to indicate that certification is required "in connection with their proposed use in terms of the proposed operating and layout plans". Some consultation with the authorities involved may be advantageous. There is also a concern that any proposed major variation does not require to be accompanied by new certification.

Section 58: Licensed Hours: The Board is aware of concerns that the lack of statutory permitted hours may lead to a patchwork effect across Scotland resulting from the fact that each Board will be able to develop separate and distinct policies on permitted hours for their areas. If correct, these concerns would of course be exacerbated with more Divisional Licensing Boards. However the Board considers that it is vital that decisions on appropriate hours of operation be taken locally having regard to any policies adopted and publicised in the required 3 year 'Policy Statements' and also the careful assessment of each premises operating plan. The Board also has concerns regarding the lack of a provision to allow extended hours on an occasional basis particularly in respect of events which cannot be foreseen such that they may be covered in terms of the approved operating plans. Any request for an 'occasional extension' would seem to be considered a 'major variation' in terms of the Bill and as such would require a Board hearing in order to be considered and determined. The Board is concerned about the obvious practical difficulties this will create.

Part 6: Personal Licences: In order to keep track of the personal licences granted by different Licensing Boards around the country, a database or electronic register of personal licences should be created. It is noted that applicants for personal licences do not have the power to appeal against any adverse decisions but it is again understood that the Scottish Executive will also address this.

Section 115: Excluded Premises: While the Board is of the view that the sale of alcohol is often incompatible with premises whose main purpose is to operate as a petrol service station, the Board also recognises that there may be areas of the country in which it is desirable for such premises to be able to sell alcohol as well, particularly in rural areas where the petrol station may also serve the local community as the general store, post office and off-sales. The Board therefore supports a system whereby the licensing of such premises will remain at the discretion of the local Licensing Board which is in a position to properly determine the relative operating plan. It is also suggested that this exclusion would affect a number of existing licensed premises which may claim 'grandfather rights' - although it is understood that the nature and extent of any grandfather rights has still to be determined.

Section 122: Appeals: If it is considered necessary to provide a stated case, the form of stated case and the procedure to be followed will require to be clarified. Stated cases are presently only used in criminal courts where formal evidence is led by witnesses who have been cited to appear and where the Court makes findings in fact based on the evidence heard. It is considered that it may be difficult to follow this format with Licensing Boards given the lack of formal evidence presented by persons having first hand knowledge of the matters to which they are speaking. Additionally, for
applications where there may be a large number of objectors it is difficult to see how a hearing on adjustments to the stated case could be properly conducted or any meaningful conclusion reached. A great deal of time and effort is likely to be taken up with very little benefit to the process. It is suggested that the present requirement to issue a 'statement of reasons' is retained.

Section 127:
Fees: Will Licensing Boards be entitled to charge fees from licence holders on those occasions when the Licensing Board wishes to hold a review of the licence? The Bill makes provision for regulations to be made to allow the Board to charge an annual fee to licence holders. Clarification is required regarding the sanctions open to the Board for non-payment of this fee. The Board is concerned that fees paid by licence holders should allow the licensing authority to meet all the costs of operating the new system, including the costs of the new Licensing Standards Officers. 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.

Other Issues:

Transitional provisions:
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 Expert Reference Group discussed the transitional arrangements but that no conclusion could be reached on practical and effective proposals. In addition 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.

'Grandfather rights':
The issue of 'grandfather rights' on 'conversion' during the transitional period requires clarification - in particular as to the extent of the rights to be given to a current licence holder, and how such rights would interfere with a Board's determination of operating plans and over provision. In addition, if hours are excluded from grandfather rights there will presumably be great concerns from the operators of nightclubs which presently benefit from a 'differential' in Glasgow of some 3 hours over pubs etc. If hours are included this will affect the Boards ability to properly determine applications / operating plans - where for example a Board may wish to curtail the operating hours of off-sale premises which have become the focal point for youth disorder in a neighbourhood.

Training:
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.

Regarding the training of Board members, the requirements are fairly tight as regards the production of evidence by individual Board members that suitable training has been undertaken. It must be borne in mind that the absolute prohibition on members taking any part in proceedings pending the production of such evidence could have consequences for the Board's quorum, certainly in the initial stages.

No proof No sale:
The Board supports the 'no proof no sale' approach in attempting to tackle sales to under 18s. However it is thought that the introduction of a national proof of age card which cannot be easily duplicated / forged should be considered.
Children:
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. There is a general acceptance that licensing legislation can only ever, at best, assist in prompting social change - that greater social and cultural change involves the application of a number of diverse factors - but it is considered that changing / influencing the drinking environment to encourage more family friendly licensed establishments would go a long way towards improving the attitudes of young people to the consumption of alcohol.

Test Purchasing
The Board would support any scheme for the 'test purchasing' of alcohol in an attempt to prevent under-age sales. The Board is aware of approved schemes for 'test purchasing' in respect of cigarette and fireworks sales and considers that it is appropriate for this approach to be extended to the sale of alcohol.

Licensing 'Objectives'
Whilst the Board accepts and supports the 'licensing objectives' detailed in section 4 of the Bill it would prefer that they be designed as 'principles'.

SUBMISSION FROM FROM HERIOT-WATT UNIVERSITY STUDENTS ASSOCIATION

Club
Under the 1976 Act Student Unions were unequivocally recognised as clubs. We would like to see similar recognition in the current bill or failing that, a statement from the Scottish Executive that they intend to recognise Students' Unions as clubs.

Among other reasons, this would allow standard conditions to be set for Student Unions. Heriot-Watt is a campus university and we provide bar and social space after midnight on Campus. This is not subject to the sort of problems that city centre venues face in the early morning and it would be inappropriate to apply standard conditions such as the requirement for CCTV or a minimum entry charge.

Premises Licence
Many Students' Union Buildings serve a variety of purposes for the members providing social space and offices as well as welfare advice centres, shops, bars and catering outlets. At present the Club Registration covers the whole of the premises with Associations choosing to prohibit alcohol and/or smoking in selected parts. How will legislation provide for these multi-functional buildings? Will there be an opportunity for clubs and/or others to specify within the operational plan which sections of a building are to be licensed and how to obtain permission for changes?

Promotions
The proposed "48 hour" rule will not stop the most irresponsible promotions. Currently many city centre operations target students midweek - often Tuesday and Wednesday – so would not be deterred by the 48 hour rule. We are concerned for two reasons – the clubs will continue to target students and other niche groups with irresponsible promotions midweek, encouraging the misuse of alcohol
- Students' Unions will be disadvantaged by this rule which allows the competition to offer cheaper prices to students when it suits them.

A seven day rule which would stop establishments heavily discounting to niche groups on quiet nights (the cause of most irresponsible promotions) as would minimum pricing. The proposals in the bill will not do this.
Training

We seek to ensure that the training standard allows for flexible delivery of training - both in terms of method of delivery and the range of organisations accredited. Many students work in the industry and would not be available for standard half day or day long training courses for instance.

We are concerned at the lax definition of training for bar staff. We feel that all staff should be trained to a national standard except the most casual of casual staff (those working two or three days per year at special events such as Kelso Races, Scottish Agricultural Show, local fetes etc). The three month rule could mean that student staff are employed in pubs and sacked after three months to avoid the requirement for training.

Licensing Forum

We think that it is important that Student Unions are represented at local licensing forums. The General Manager of the Association is currently members of the Edinburgh Licensing Forum. We are concerned that if the maximum ceiling for members in set at 10 then we will be excluded. We see no need for the bill to specify a maximum number and feel that this should be set by each local authority at a level appropriate to the area. For instance, not all authorities have a University in their area, but where there is one (or more than one as in the major cities) it is an important constituency that deserves recognition.

SUBMISSION FROM THE HIGHLAND COUNCIL

The Highland Council welcomes the opportunity to comment further on the Bill. The Council is very supportive of the overall objective to introduce a modern simpler more flexible licensing system. In particular the Council supports the following proposals :-

- A clear annunciation of the licensing principles.
- The introduction of Licensing Standard Officers to ensure a higher standard and proper operation of licensed premises.
- The executives moves to deal with irresponsible promotions.

The Council wish to amplify a number of points.

- **Transitional arrangements**

  Whilst the detail has to be fixed, it is anticipated that the transitional arrangements will be a considerable administrative burden as it appears that in effect the Divisional Licensing Boards will have to reconsider applications for every single licensed premises in the Highlands. There are over 1300 licensed premises throughout the Highlands. Under the new regime the scrutiny of applications will be more rigorous and will be required to be more detailed than is often the case at present.

- **Irresponsible Promotions**

  The Highland Council has previously supported the moves to prohibit irresponsible promotions in licensed premises and the tentative proposals are to be welcomed.

  Members have noted that “off sales” will not be included in these provisions. This is considered to be a serious omission as it is widely recognised that poorly controlled alcohol sales in off sales premises can give rise to a number of anti social problems.

  The Council has noted that Tavish Scott has already indicated that he is prepared to consider this issue further. The Council recognises that the proposals in the Bill are aimed at the “on sales” trade and a slightly different approach would be required for off-sales. The Council recognises that this will be a difficult issue to legislate upon but considers that it is sufficiently important to be addressed at this stage.
Garages

It is also proposed that garages will not be entitled to sell alcohol. Members recall that in the early 90s there were a number of assertions 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.

Phoenix Companies

Concern has been expressed by members that the seeming ability of licensing operators to set up companies to avoid paying business rates. Under the Housing legislation, any tenant in arrears of rent or Council Tax is prohibited from exercising their right to buy.

The Council supports a similar proposal in the Licensing Bill to the effect that applicants in arrears with their business rate or Council Tax are not entitled to apply for a premises licence.

There is already legislative support for this proposal elsewhere in the field of licensing. Under the current Gaming Acts a Licensing Board can refuse a Bingo Licence if certain fiscal duties remain unpaid. The Council would maintain that unpaid business rates should be treated similarly.

The Council also maintains a robust system will have to be in place to ensure the annual retention fees are paid and failure to pay would jeopardise any premises licence. In order not to penalise small businesses, fees shall be on a graduated basis having regard to the nature and size of the operation.

Conclusion

If requested the Council would welcome an opportunity to offer oral evidence in support of these submissions.

Alistair Dodds
Director of Corporate Services.
May 2005

SUBMISSION FROM IAN SYKES

I would like to put forward the following comments and suggestions for consideration by the committee before the final bill is written.

Licensing Boards
Use of the internet for application to join the board.
Publication of those who have applied and eventually elected to the board

Guidance should be issued (by SP) prior to Board publication of overprovision. So applicants (existing and new) can account for the concerns

Licensing Forums
No information given on how persons can apply for election to the forum.
Local catering/hospitality training institutions MUST be offered membership
Police
I totally agree with their rights of access at any time whilst open or they suspect is open.
By warrant only whilst closed.

Premises Licence
Guidance is required before Act become law, as to the situation regarding existing premises, which
have held a licence for many years.
These may not strictly comply with all new building warrant (and other) regulations. They did
comply when they applied originally but with no changes to premises since then they would not
require any updating of, for example, thermal insulation properties of the walls and roof.
Will they all now have to comply?

It should be a legal requirement for a Personal Licence Holder to be on the premises when alcohol
is sold. Otherwise what is the point of this highly trained and accountable person.
There can be a lead in time to allow persons to be trained.
At the very least there should be a Personal Licence Holder on the premises, when alcohol is sold
after midnight and/or when the capacity of the establishment is over 200, or when entertainment and/or dancing is planned.

Any (legal) substance that is consumed is classed as a food. So why differentiate between food
and beverages. Operating plan must contain a Food Hygiene certificate/approval. (Think of bars
snacks, ice, water, poor cleaning of dispense equipment, all these can affect public health)

If a board request the return of a plan for adjustment, what happens in the interim period?
Suspension of the questioned activity, suspension of all sales, or continuance?

We live in an ever changing world, fads, fashion, ethics, standards etc, why do we think a Premises
License can sail through all this without affect or being affected? they should be reviewed at the
very least every 10 years. And at renewal of owner, change of trading name, change of tied hose
status.

Preventing excessive drinking
I do not believe the proposed act will have very much effect on `binge drinking'. We had enough
laws before to tackle them but the will seemed to be missing. What does this bill bring that was not
available before? Nothing.
Take to court those who are drunk, fine a % of income
Take to court those who sold the alcohol, fine a % of turnover, endorse Personal Licence Holder
(all or just the one) who were on duty.
A consistent firm approach, like speeding offences, will bring about change in attitude.

Controls on promotions on alcohol should apply to both On and Off trade. Where else do the
younger ones buy or get to know the score than from off sales, especially supermarkets. There is
always an older `guy' willing to buy for a cut or the craic.

There are so many prizes available, one club has spot £50 and £100 prizes. Where will they spend
it? In the pubs that night.

Water for free, water is not free. Water Boards sell it, glasses cost to supply, wash and handle,
staff take time to serve. It should be an establishment choice but a Local board/forum max price
limit.

Miscellaneous premises /licence

Why can we not sell or supply beverages/alcohol from a bus if there is a Personal Licence Holder
present and on board at all times of supply and from supply to final destination.
This should apply to planes, boats, coaches, buses, trains etc. Stop supplying and selling 30
minutes before arriving at destination.
What are we to do with garages, service stations that already have licenses. What about the suggestion that fuel sales are over there (in an open plan environment) but this is a mini market, Shop sells fuel. There are and where many of these in the highlands.

I do not follow any logic about boats coming into line with the law but trains do not. They all should. It is not the Acts job to define how a service provider copes with cross country travel of staff, it is there to control the supply of alcohol.

I also do not see the logic of why small private clubs should not also come within the umbrella of the act. However I think they should be given a longer transition period, unless the local police or forum believe otherwise.

Perhaps it should be up to the board/forum to decide if they should.

**Personal Licences**

Holders of such licences should wear a badge or ID card whilst on duty.

What qualification does the board envisage? I seriously doubt the ability of a two day course to train a person to this level from scratch.

Past licence holders, may manage with an updating course of about 3 days duration.

This is the golden opportunity for the local Licensing Officer to get to know them, for the police (licensing team) to get involved. Local A&E teams. If we are to change the face of alcohol supply this is the one and only chance we have to really tackle it. **THIS IS THE SUPPLY CHAIN!**

I am concerned on this issue that it will be too mildly handled.

Why not a process of CPD accreditation. Supply of training could then be varied, from self reading, on-line, distance learning, local college etc.

Staff training, they should have (or have started a recognised course) Food Handlers Certificate and the ServeWise (or equivalent) training, within 28 days of commencing employment.

**Objections**

This is going to be fun.

I assume though I don't recall reading it, that objectors must have valid reasons and can site a transgression from the Operating Plan. (This pre supposes that all Operating Plans for each establishment will be public knowledge and obtainable from the board or web.

I think the bill should consider a cash on the table approach, if upheld or deemed an appropriate objection (even if not upheld) then the fee is refundable. It would curb silly waste of time objections. Could premises sue an objector for the waste of time and possible trading loss whilst an objections is looked into, should it later turn out to be invalid?

**Children and the new law**

The Scottish Parliament must, really MUST, endorse one or more acceptable proofs of ID. Which the industry can accept.

Is there any exclusion of under 18's working in a premise to clear and or wash glasses etc. Guidance is required. Perhaps if they are used then a Personal Licence Holder must be present at the same time.
Offences

So it is legal and acceptable for me, whilst sober and fully in control of my actions to use obscene language! That is silly, change the law to forbid the use of such actions and language at all times within the Licensed Premise.

Same applies to disorderly manner.

Exclusion Orders

To be effective staff in premises and Personal Licence Holders must have access to a database of such people. I hardly think they (customer) will announce their Exclusion order, when they arrive at another pub or bar.

This concludes my considerations on the Act as proposed.

Ian R Sykes BA. FHCIMA, TQFE, Cert’. NeBOSHH,

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND

INTRODUCTION

The Licensing Law Sub-Committee of the Law Society of Scotland (the Sub-Committee) welcomes this opportunity to provide written evidence to the Local Government and Transport Committee.

It is the view of the Sub-Committee that the existing legislation requires to be updated, clarified and simplified. The Sub-Committee is therefore pleased to see that the lengthy and comprehensive consultation process has ensured that this Bill represents an important step in achieving these goals. In particular, the Sub-Committee is delighted to see that the licensing objectives are stated clearly in Section 4.

SPECIFIC COMMENTS

Section 6 – Statements of Licensing Policy
The Sub-Committee notes that, as drafted, this section provides that a Licensing Board (“Board”) must, before the beginning of each 3-year period, publish a statement of its policy with respect to the exercise of its functions under the Act.

The Sub-Committee is of the view that Boards should begin now to formulate their policies and draft their initial statements in advance of the introduction of the Act, as there is a possibility that the appointed day for introduction of the Act will be delayed due to the fact that policies may not be ready for implementation immediately.

Although it is acknowledged that the party in power in a local authority may change in the meantime, it is felt by the Sub-Committee that it is better to have the policy in place first and then amend it accordingly.

Section 7 – Duty to Assess Overprovision
This section provides that a Board must include a statement as to the extent to which it considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the Board’s area. The Sub-Committee believes that the lack of a definition of “locality” is problematic.

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?
If the duty to assess overprovision is deemed necessary, it is important that any assessment is accurate. There may therefore be some merit in adopting transitional provisions for the existing licences in a Board area before this new Act comes into force.

**Section 8 – Applicants attempting to influence Board members**
Section 8 specifies that an applicant attempting to influence Board members into supporting an application shall commit an offence. The Sub-Committee is of the view that objectors should be treated in the same manner as applicants and therefore section 8 should apply equally to objectors.

**Section 9 – Licensing Board’s duty to keep a Public Register**
This section requires each Board to keep a public register containing information relating to premises licenses, personal licenses, occasional licences and decisions relating to applications made to the Board under the Act. The Sub-Committee feels strongly that this is an opportunity to introduce a simple, central, national and easily accessible computer register of designated personal licence holder. Such a system could also have information pertaining to the training records and any other useful information. It is the Sub-Committee’s view that this will greatly assist administration by substantially reducing the bureaucratic burden on Boards and should be a mandatory requirement in the Bill. It will also have an important role to play in fulfilling the objectives of preventing crime and disorder and securing public safety and, indeed, the remaining licensing objectives.

**Section 10 – Local Licensing Forums**
The Sub-Committee is of the view that the Board and not the Council should establish the Licensing Forums. Furthermore, 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.

**Section 13 – Licensing Standards Officers**
This section introduces Licensing Standards Officers (LSOs). The Sub-Committee is of the view that the LSOs exist for the wider public interest and therefore should be funded by the Scottish Executive even if part of the cost is recovered from fees. The Sub-Committee suggests that the 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. By being able to carry out their role efficiently LSOs will be crucial to the achievement of the licensing objectives.

**Section 19 – Application for Premises Licence**
Section 19 requires, *inter alia*, that the application for a premises licence be accompanied by a layout plan “in the prescribed form”. The Sub-Committee feels that clarification is required of what is meant by a layout plan in the prescribed form. For example, will this require the services of an architect? Flexibility and common sense require to be applied by Boards as a 1:100 scale plan, while suitable for some premises, may not be suitable for large, multi-floored buildings and possibly result in practical administrative difficulties.

**Section 20 – Notification of Application**
Subsection (1) (a) requires the Board to give notification of an application for a premises license to each person having a notifiable interest in the land. The Sub-Committee is of the view that the requirement in subsection (1)(a) is too wide and that the notification procedure should be more in line with the current planning notification procedure where applicants must notify owners, lessees and occupiers. The Sub-Committee therefore suggests that the Bill requires a clear definition of “notifiable interest”.

There is also no indication as to how a Board will be able to gather the information on who has a notifiable interest. In addition, no timescales are specified and, in general, throughout the bill there are no sanctions provided for the failure of a Board to comply with the obligations set down in this bill.

With reference to subsection (1)(c), which requires notification be given to the Council within whose area the premises are located, the Sub-Committee feels it is necessary to specify who in the
Council should be notified and indeed why. The sub-committee considers all such notifications must be required to be made electronically.

Also, the 21 day period specified in subsection (3) may not work during the transitional phase. In addition, neither the Board nor the Chief Constable have any obligation to intimate the Chief Constable’s notice to the applicant. The Sub-Committee believes that, as a matter of fairness, the applicant should be entitled to obtain a copy of the Chief Constable’s comments no later than 14 days before any hearing.

Section 21 – Objections and Representations
Section 21 sets out the procedure for objecting to an application. The Sub-Committee believes that “any person” is far too broad a category. The Sub-Committee suggests that it should be clarified that it should be any person with a real and/or material interest or a person likely to be adversely affected by any proposals. There is, in the Sub-Committee’s view, the potential for serious administrative delays if this section is enacted as drafted.

Section 22 – Determination of Premises Licence Application
With reference to subsection (8), which requires the Board to specify the grounds for refusal, the Sub-Committee is of the view that there should be a clear requirement on a Board to provide written reasons for the refusal of an application within a specified time period.

A Board may modify an operating plan (section 22(7)); but modification is not the attachment of a condition. Nevertheless, compliance with the operating plan is a condition of the licence (Schedule 3, paragraph 2). A modification becomes, in effect, a condition. The safeguard provided in section 25(5) would not apply: modification could, for example, conflict with mandatory or discretionary conditions in relation to children’s access. In the view of the Sub-Committee modification should be brought within the constraints set out in section 25(5).

Section 25 – Conditions of Premises Licence
There appears to be no power to remove or modify conditions, only add or extend. The Sub-Committee suggests that it would be sensible to include such a power to allow for flexibility. Otherwise, it will not be possible to change the Schedule 3 conditions. Furthermore, the provisions in subsection (7) appear to be wide in scope and may be interpreted differently throughout the country.

Section 26 – Period of Effect of Premises Licence
Subsection (2) states that “a premises licence is not to be taken to have ceased to have effect under subsection (1)(b) by virtue of the occurrence of any of the events mentioned in paragraphs (c) to (e) of subsection (5) if, within 28 days of the occurrence of the event, an application for the transfer of the licence is made under section 32(1).” It is the view of the Sub-Committee that the 28 day period is very short. The Sub-Committee suggests that this should be extended to 42 days or, alternatively, that there should be a saving provision in the event that the deadline is missed.

Section 27 – Application to vary Premises Licence
With reference to subsection (6)(c), the Sub-Committee is of the view that any “variation of the information contained in the licence relating to the premises manager” would be an unduly cumbersome and restrictive exercise as the premises licence would have to be varied each time a new manager were appointed. The Sub-Committee therefore believes that it is inappropriate to link the premises licence to the manager in this way. Premises licences and premises managers are distinct entities.

Section 29 – Variation to substitute new premises manager
As indicated above, the Sub-Committee is of the view that this section should be deleted.

Section 28 – Transfer of Application of Person other than Licence Holder
With reference to subsection (3)(c), the Sub-Committee would like clarification on what “being a person other than an individual, a partnership or a company” means. Furthermore, the Sub-Committee is of the view that the 28 days period specified in subsection (1) is not long enough. A mechanism is required to enable the personal licence holder to continue to operate in the event of...
the death or otherwise of the premises licence holder. It is in the public interest that the premises should be able to continue operating perhaps under the day-to-day manager’s control.

**Section 34 – Application for Review of Premises Licence**
The Sub-Committee believes that the term “any person” is too broad for the reasons stated in the comments on section 21.

**Section 35 – Review of Premises Licence on Licensing Board’s Initiative**
This section provides a power for Boards to initiate reviews of premises licences. The grounds for review are the same as those for applications under section 34. Where a Board proposes to initiate a review of a premises licence, it must provide a written report (to be known as a review proposal) setting out the grounds that they feel merit such a review of the premises licence.

The Sub-Committee is concerned that this provision may not be required and may lead to conflict and perceived or real issues of predetermination. If a Board does have concerns about any licensed premises it can simply request that a Licensing Standards Officer investigate and report accordingly.

**Section 39 – Duty to notify Court - Premises Licence**
This section requires premises licence holders who are charged with relevant offences to notify the court of the fact that they hold a premises licence. This will enable the courts to become aware of cases to which the duty in section 40 will apply.

The Sub-Committee has concerns about the introduction of offences for failing to carry out what is essentially an administrative task. The Sub-Committee feels this is an undue burden on the licence holder and unnecessary one as the clerk of court already has this responsibility. This requirement could lead to duplication of expenses and administration. If the clerk of court simply had to log the information into a central database (see Section 9 above) there would be considerable savings in time and money for all concerned.

**Section 41 – Licence Holder’s Duty to notify Licensing Boards of Convictions**
If a central computerised register were set up then it would be a simple matter for such convictions to be entered onto it. This would greatly reduce the administrative burden. See comments on 39 above.

**Section 48 – Certificates as to Planning, Building Standards and Food Hygiene**
The Sub-Committee agrees that there should be a closer relationship between licensing and planning. The Sub-Committee is of the belief that there should be a recognition in the Bill of grandfathering rights, which are provisions exempting persons or other entities already engaged in an activity from rules or legislation affecting that activity. Grandfather clauses would avoid disadvantaging groups with established interests in the activities affected.

Business requires certainty to secure current and future investment jobs and prosperity. A transition from licensed premises to premises licences (to include registered clubs) is likely to be a major administrative and very expensive and time consuming exercise and every reasonable effort should be made to minimise the effect of this for all concerned.

The Sub-Committee suggests that all established businesses which have a liquor licence with permitted hours in terms of the Licensing (Scotland) Act 1976 as amended should have the presumption of being entitled to a premises licence with existing permitted hours included as operating hours in their operating plan. These businesses should also be presumed to be exempt from having to provide Section 48 certification on the basis that such a presumption may be rebutted if it can be demonstrated by an objector that the operation of any such business materially contradicts the Licensing Objectives.

If it can be demonstrated by an objector that the operation of any such business materially contradicts the Licensing objectives then a premises licence for an established businesses should be refused by a Board if the draft operating plan for such business cannot reasonably be amended to resolve such contradictions.
The Sub-Committee is of the view that a central database would assist in administrative procedures. Compiling and maintaining such a database should be a mandatory requirement for all reporting departments and the police. Avoidance of unnecessary paperwork and duplication of effort should be a key theme of this Bill.

Section 53 – Occasional Licence
The Sub-Committee has serious concerns that the provisions of section 53 are far too complex and will impact negatively on local businesses. The Bill as drafted sets out what is in the Sub-Committee’s view a cumbersome administrative procedure that could be simplified considerably. It is the Sub-Committee’s experience that the 1976 Act provisions generally work well. It is the Sub-Committee’s view that there should be a fast-track procedure with the Clerk to the Licensing Board delegated to have the power to deal with it.

The Sub-Committee would refer the Committee to paragraphs 14.24, 14.25 of the Nicholson Committee recommendations and Recommendation 72, which states:

“The present provisions in sections 33 and 34 of the 1976 Act relative to occasional licences and occasional permissions should be replicated in any new legislation. However, it should be provided that an occasional licence may be granted to a personal licence holder who has the appropriate qualifications entitling him to cater for the event in question; and in the case of occasional permissions there should be a statutory definition of ‘voluntary organisation’.”

The Sub-Committee concurs with this recommendation.

Section 122 – Appeals
The Sub-Committee is concerned about the immediate imposition of sanctions. It is the view of the Sub-Committee that the use of summary application procedure for cases in which a sanction is already in place may lead to unacceptable delays; and, in cases where the sanction is of limited duration (for example, a short-term trimming of operating hours or closure for up to fourteen days), will render the right of appeal ineffective.

The process can be further delayed if the decision of the Sheriff or Sheriff Principal is appealed to the Court of Session. In the most recent licensing appeal\(^8\), the court gave a determination in relation to a decision taken by the Licensing Board on 1\(^{st}\) November 2002. The decision was quashed. In that case, the licence holder had been able to trade until the appeal was finally determined but it is easy to see the difficulties which would have ensued had the position been otherwise.

The Sub-Committee favours the solution proposed by the Nicholson Committee. This envisaged an early interim hearing before a Sheriff restricted to the single issue of whether the sanction should be placed in abeyance pending a Sheriff Principal’s determination of the appeal on its merits (recommendation 42). It is also worth noting that the Working Group on Off-sales in the Community (the Daniels Committee) proposed an interim hearing before the sanction took immediate effect.\(^9\)

Section 128 – Inspection of Premises before Grant of Licence etc.
The provision in subsection (4) whereby a person exercising the power conferred by subsection (2) may if necessary use reasonable force is, in the view of the Sub-Committee, unnecessary. If premises are not inspected before the grant of a licence then the licence should not be granted. This would obviate the requirement to use reasonable force to gain entry.

SUBMISSION FROM MITCHELLS AND BUTLERS PLC

I am writing to submit my comments on the Licensing (Scotland) Bill on behalf of Mitchells and Butlers plc (“Mitchells & Butlers”), now that we have had the opportunity to study it in some detail. As you will be aware, Mitchells & Butlers is one of the U.K.’s leading operators of managed pubs,

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8 Smith v. North Lanarkshire Licensing Board [2005] CSIH 22
9 Recommendation 29
bars and restaurants, offering eating, drinking and entertainment for our customers in over 2,000 premises. Mitchells & Butlers operates 108 premises in Scotland and we employ over 40,000 people nationally. Our businesses are at the heart of several thousand communities.

We welcome the opportunity to comment on the contents of the draft regulations and trust our detailed comments will be seriously considered in finalising the regulations.

While the Company agrees with many of the proposals contained in the draft regulations, we are concerned by the introduction of others which we do not believe are in the best interests of the Boards, the community or the licensed trade. Where appropriate, I have used the headings in the Bill in order to be helpful. It should be noted that these comments are in addition to the Scottish Beer & Pub Association response which we endorse.

1 Introduction

1.1 Mitchells & Butlers is supportive of and committed to the implementation of the recommendations of the Nicholson Committee, particularly as they relate to: the introduction of premises and personal licences; consolidation of the current seven types of premises licences into one; and the abolition of the current permitted hours approach to licensing of premises, which we believe has clearly outlived its usefulness.

1.2 Mitchells & Butlers fully supports the Bill’s stated intentions and finds the content of the Bill to be generally acceptable, with a small number of specific concerns and comments, which are detailed below.

2 Part 2, Section 5 – Licensing Boards

2.1 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.

3 Part 2, Section 7 – Duty to assess overprovision

3.1 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 assessments rarely take account of factors like a large number of licensed premises being increasingly food reliant businesses, rather than just drink-led businesses.

3.2 We believe that some of the Licensing Boards are satisfied they do not have an “overprovision” of licensed premises within their Board areas. Imposing a fixed definition of “overprovision” may therefore conflict with some Boards’ current assessment of their area.

4 Part 2, Section 10 – Local Licensing Forums

4.1 Since the Bill already identifies five of the groups that should fill the maximum ten spaces on a Licensing Forum, there appears to be little scope for the varying perspectives of different types of licensed trade premises to be represented on the Forum. We would bring your attention to the existing practice in the Glasgow Licensing Forum that currently has thirty or so members drawn from a range of interested parties as a more appropriate Forum specification.

5 Part 3, Section 20 – Notification of application

5.1 We concur with the suggestion by the SBPA that the notification of near neighbours in relation to licence applications should be broadened. However, we note from the Bill and
the accompanying Financial Memorandum (Section 327) that there is an intention to increase the radius for this notification to 50 metres. We believe that such a change will impose significant additional costs, especially in urban areas, on local Boards that will assume responsibility for administering this notification system, with, we feel, marginal benefit in terms of further informing local communities of any application. We would therefore oppose a change of this magnitude.

6 Part 3, Section 21 – Objections and representations
Part 3, Section 34 – Application for review of premises licence
Part 4, Section 55 – Objections and representations

6.1 The right of “any person” to lodge objections as defined in the Bill is far too wide in our opinion. Although Boards in theory can recoup costs from those lodging “vexatious or frivolous objections,” in practical terms there will still inevitably be unnecessary additional costs and delays for Boards and for applicants who will have to bear additional legal costs. Given that any such objection threatens our ability to function the business in question, we will have to employ legal advice as early as possible in dealing with any objections or complaints and this will add to our costs. We would suggest restricting the right for objection to only those who can show a “real and material interest”, as suggested by the Daniels Committee which helped inform the drafting of the Licensing Bill.

7 Part 3, Section 22 – Determination of premises licence application

7.1 The Scottish Parliament is currently considering the Smoking, Health and Social Care (Scotland) Bill which, if passed, will introduce a smoking ban in enclosed public spaces in Scotland. We believe this will necessitate the creation of external “smoking areas” to cater for those customers who wish to continue smoking. If a Board assesses that there is “overprovision” within a particular area, then it will be unable to grant provision for new additional floorspace, including external areas, as this would be equivalent to an increase in the size of the premises. Premises which could be impacted by the introduction of a smoking ban in enclosed public spaces would therefore be hit very hard and this needs to be addressed.

8 Part 3, Section 25 – Conditions of premises licence

8.1 It is clear from the Policy Memorandum (Section 86) that the Executive are proposing that Licensing Boards would have a range of additional national standard licence conditions that they could apply to premises that were classed as “late opening.” We do not support this view and believe these additional conditions are unnecessary and are not a liberalisation of the current position. The arbitrary specification of a “late hour” against which additional conditions can be imposed appears to be a direct contradiction of the intention to remove permitted hours altogether. Furthermore, many pubs already operate beyond this hour without these conditions and permitting Boards an unnecessary discretion to apply these additional conditions will raise the costs of operating premises for no genuine reason and increase the likelihood of appeal to challenge the imposition of such conditions.

9 Part 3, Section 27 – Application to vary premises licence

9.1 As a retailer we are very concerned that we may find ourselves having to apply for a major variation to a licence, including having to undertake the public notification processes, for relatively minor changes to our premises, for example removing bar dividers within a premises.

9.2 This requirement of having to apply for a major variation would, in our opinion, be a nonsense and contrary to the spirit of what the new regime is about. It is therefore of crucial importance that the Executive provide a specific definition of the terms “significant” and “minor” as outlined in this section which will assist in clarifying this matter.

9.3 We are also extremely concerned that there appears to be no specific provision for a temporary extension of hours. We understand that it may be the intention of the Executive that such an extension should not be included in the application to vary a premises licence. We feel that this is a most unnecessary restriction, and there needs to be a facility for licensees to be able to apply for a temporary extension of hours, for
example during World Cup football or rugby tournaments or for the UEFA Cup Final in Glasgow. We firmly believe a temporary extension of hours should be treated as a minor variation, applications for which would be a straightforward process.

10 Part 9, Section 136 – Orders and regulations
Part 3, Section 48 - Certificates as to planning, building standards and food hygiene

10.1 We believe that the change from the current licensing regime under the 1976 Licensing (Scotland) Act to the new regime should take place as quickly and with as little upheaval as possible, learning from the implementation and transition experiences in England and Wales.

10.2 In England and Wales, the Government has granted the licensed trade so called “grandfather rights”. This is a provision which basically means that there is a presumption for licensees that what you have under the existing regime you continue to hold under the new regime. We believe that similar certainty in Scotland is required to secure current and future investment, jobs and prosperity.

10.3 We support the SBPA’s proposal that the Scottish Parliament accept that established businesses which enjoy the benefits of a liquor licence and hours in terms of the Licensing (Scotland) Act 1976 should have the presumption of being entitled to a premises licence with existing hours and be excluded from having to provide Section 48 certification on the basis that such a presumption may be rebutted if it can be demonstrated by an objector that the operation of any such business materially contradicts the licensing objectives.

10.4 Furthermore we agree with the SPBA that if an objector can demonstrate that the operation of any such business materially contradicts the licensing objectives then a premises licence for an established businesses should only be refused if the draft operating plan for such business cannot reasonably be amended to resolve such contradictions.

11 Part 4, Section 53 - Occasional licence

11.1 It has been suggested by the Scottish Executive that the provisions on Occasional Licences as outlined in the current bill can be readily applied to the operation of existing licensed premises. The provision of “Occasional Extensions” (which relate to already licensed premises) are covered separately in the Licensing (Scotland) Act 1976. We are concerned that, in practical terms, the Boards would be unwilling to grant licensed premises occasional extensions under the proposals in the Bill. We also believe that would not be possible for a licensee to seek an occasional licence far enough in advance (e.g. for an office party or wedding reception) far enough in advance under the current provisions of the Bill. We would suggest therefore that there needs to be separate provisions on this issue in the Bill, consistent with the 1976 Act.

12 Part 6, Section 82 – Power to prescribe licensing qualifications

12.1 We already provide accredited in-house training programmes for our managers, and training is an essential component in improving our customers’ experience. We firmly believe that any statement of requisite qualifications for bar staff or managers should recognise this and that such in-house training should not be unfairly excluded from the training qualifications stipulated in regulations. We also believe that the list should not be too prescriptive given that this will potentially restrict our training options which will drive up the costs of training.

12.2 It is also important for the prescribed qualifications to reflect the fact that during the initial transitional period when our licensees are applying for personal licences they may not have had the opportunity of obtaining any new qualifications stipulated under any legislation.

13 Part 9, Section 122 – Appeals

13.1 The Bill makes clear that the suspension of a licence will come into immediate effect (unlike the current system where the licensee has the right to appeal the decision prior to the sanction being implemented.) If one of our premises has its licence suspended and
as a consequence has to cease trading and an appeal against the decision cannot be held quickly, there is a real danger that we will suffer lasting damage, which may make it very difficult to start trading again successfully if our appeal is subsequently upheld. We do not believe that it is appropriate for an outlet to be forced to cease trading pending an appeal. We therefore suggest that a practice is established that a court hearing is held within a one-week period of a suspension being implemented. The timing of any appeals in this situation is critical. This will ensure a swift resolution for all concerned.

14 Part 9, Section 127 – Fees

14.1 Like the SBPA, we are concerned at the current lack of detail on the proposed fee structure for the new licensing system. We recognise that there will be an increase in fees overall given the expanded scope of the Licensing Standards Officers and that “larger” premises will be asked to pay proportionately more. However, this is already the case with larger premises paying more in business rates with this figure directly related to their turnover.

14.2 We are concerned that the Licensing Boards may not have given due consideration to the fact that although many premises are owned by a larger retail pub group, these premises may be leased, franchised or independently managed and therefore required to bear licensing fees themselves. We would not wish the new Licensing Boards to “goldplate” their new licensing functions with the licensed trade picking up the costs. We would therefore hope that the Scottish Executive would be in a position to provide the final detail of how the new fee structure in England and Wales will work prior to the Bill being passed by the Scottish Parliament, so that this can be subjected to further scrutiny. In our experience the new fee structure has increased costs to the trade by a factor of four and this will constitute a major cost to the industry going forward. Indeed, it may be that the Scottish Executive wishes to consider transitional support for the new Boards in order to offset some of the costs to the industry.

15 Schedule 3 – Irresponsible Drinks Promotions

15.1 As demonstrated by our recent drinks industry award of Britain’s Most Responsible Drinks Retailer in November 2004, we actively support action to tackle “irresponsible promotions” and follow the Portman Group’s promotional activity code in addition to our own responsible retailing guidelines.

15.2 We would suggest that the wording in the Bill is too prescriptive given that promotional activity is a legitimate tool for promoting new products. We are encouraged that the Scottish Executive are taking powers to apply restrictions to the off licensed sector but are concerned that they have given no firm indications when or if they will use them.

15.3 Within our industry there is best practice on the conduct of “responsible promotions” which has been previously endorsed by the Scottish Executive, and we would suggest that there should some provision which would allow these limited, responsible promotions in relation to new products to continue.

15.4 Our experience in the industry has demonstrated an increasing trend, particularly amongst younger drinkers, of consuming alcohol purchased from the off sales sector at home, and then coming out for an evening in pubs and clubs, passing the consequent problems of “binge drinking” onto the on trade. In the past, the on and off trade have been perceived as different and separate entities. This is no longer the case.

15.5 We believe that any restrictions on the on trade as regards promotions should apply equally to the off trade, otherwise it risks simply displacing the problem of “binge drinking” to other uncontrolled environments, most notably the streets or the home where alcohol consumption has risen markedly in the last 15 years.
16 Policy Memorandum, Section 138 - Young People

16.1 We note the Executive's intention of "requiring licensees offering an on-sales service to think actively and seriously about whether their premises are suitable for children by choosing whether to “opt in” to access by children.” We support the SBPA's previous submissions to the Nicholson Committee and other Executive consultations that an “opt-out” system should apply to access to a licensed premises by children.

We would also like to make the point that all conditions that may be contained in the ultimate legislation relating to such issues as opening hours, promotions, access and purchase of alcohol by children must be thoroughly drafted and clear so that these conditions can operate as genuinely national conditions and not conditions open to regional interpretation.

In conclusion I hope our comments will be received constructively and seriously considered when reviewing the comments received on this consultation exercise.

Bronagh Kennedy
General Counsel and HR Director
Mitchells & Butlers PLC
22 April 2005

SUBMISSION FROM NORTHLINK ORKNEY & SHETLAND FERRIES LTD

1. Introduction

1.1 NorthLink Orkney & Shetland Ferries Ltd ("Northlink") is the lifeline ferry operator serving the Northern Isles of Orkney and Shetland. NorthLink operates three passenger and car ferries and two freight and livestock ferries which run daily ferry services between five Scottish terminals, namely Lerwick, Kirkwall, Stromness, Scrabster and Aberdeen. The passenger vessels are new (2002) and designed to modern cruise-ferry standards. Since starting services in October 2002 NorthLink has been very successful in attracting a significant increase in traffic on these routes much of it from tourists who would not otherwise have visited the Northern Isles. As part of NorthLink's service alcohol, together with non-alcoholic beverages and other refreshments, is sold on board its ferries via our bars and a la carte restaurant.

1.2 NorthLink welcomes the opportunity to submit comments to the Local Government and Transportation Committee on the Licensing (Scotland) Bill (the "Bill"), and in particular, on its application to ferries. In preparing our response we have been assisted by our legal advisers, Shepherd + Wedderburn.

2. Principles behind the Bill

2.1 NorthLink applauds the Bill’s aim of modernising the current licensing laws, and supports its attempts to tackle binge and underage drinking. Indeed, NorthLink has for some time had a number of measures in place in an effort to ensure that alcohol is consumed in a responsible manner. For example, we stringently enforce age checks, train staff in the management of customers’ consumption rates to minimise issues related to excessive alcohol consumption and prohibit the on-board consumption of alcohol brought on-board. On land a drunk and troublesome customer can be ejected from licensed premises where at sea they have to be ‘managed’ for many hours to ensure they do not pose a danger to themselves, fellow passengers or the ship’s crew.

2.2 NorthLink has a very strictly enforced zero tolerance towards alcohol and drug use by ships’ crew. This involves both cause testing and the use of unannounced random testing.

2.3 In NorthLink's experience, the type of customer services we offer and the training we have provided to experienced crew is such that we are in general successful in regulating the consumption of alcohol and in controlling alcohol-related behaviour. NorthLink has concerns regarding the appropriateness and practical application to ferries of a number of measures in the Bill. These concerns are detailed below.
3. Definition of "Premises"

3.1 NorthLink is concerned about the inclusion of vessels, (such as boats and ships travelling within the United Kingdom), in the definition of "premises" in section 137 for a number of reasons.

3.2 Firstly, section 48 of the Bill prescribes that an application for a premises licence "must be accompanied" by a planning certificate, and a building standards certificate. Ferries cannot receive planning certificates or building standard certificates (they are only issued for buildings). As currently drafted ferry operators would be unable to comply with requirements for a premises licence. However, passenger vessels are already subject to a very substantial regime of standards and certification which is applied by the marine control authorities and in general the remit and powers of most shore based authorities do not extend to the marine environment as it is already been separately regulated.

3.3 Secondly, NorthLink is further concerned about the seemingly arbitrary scope of the term "premises". For instance, hovercraft and trains are not defined as "premises", whereas other vessels (such as boats and ships) are included in the definition. It appears to us that there is no proper and objective justification offered for the selective application of the Bill to ferries, when it is not applied to other modes of transport that also sell alcohol and which move between licensing areas.

3.4 We believe that in Scotland the proposed legislation would apply to only two ferry operators; Caledonian MacBrayne and NorthLink Ferries. Both operators are lifeline ferry service operators and neither is involved in 'cruising' or similar activities which in the past have led to the tragic loss of life which it could be argued was partly alcohol related.

4. Responsible Person

4.1 In general our crew work a pattern of two weeks on and two weeks off. With three passenger vessels this means we then have six individuals for each position plus a number of relief crew. However, Hours of Rest Regulations apply to seafarers (as opposed to Hours of Work regulations for shore based staff) and these require the strict application of rest periods within each 24 hour day. Given the length of some of our voyages (14 hours) and the period within which a bar may be open it could prove cumbersome to ensure that at all times each vessel carried a Responsible Person who was on duty and genuinely responsible for the bar.

4.2 The Bill provides in section 24 that a "premises manager" must be identified in any premises licence. NorthLink is concerned that its staff may be unwilling to be named as a particular premises managers especially given that staff move between ships as they may perceive this to be additional responsibility to which they do not wish to subscribe.

5. Appropriate Licensing Board

5.1 NorthLink is also troubled by the manner in which an appropriate Licensing Board is determined. According to section 118 a vessel's appropriate Licensing Board is determined by the location in which it is "usually moored or berthed". This phraseology we would suggest is applicable to a cruising vessel and not to a ferry.

5.2 Almost by definition most ferries are not "usually moored or berthed" in any particular location. The nature of the ferry business requires that they continuously move from one location to another. From a practical perspective, therefore, NorthLink and other ferry operators would not always be able to ascertain the location in which a vessel could be deemed to be "usually moored or berthed". This would in turn lead to practical problems determining the appropriate Licensing Board.

5.3 Our colleagues at Caledonian MacBrayne operate a number of vessels with bars and these ships can be moved between routes at a few hours notice to ensure the continuity of ferry services across their network. Indeed one of their vessels operates a relief service for NorthLink during the annual drydocking period and depending on the demands within their own network in theory CalMac could opt to send to the Orkney service any one of nine different vessels.

5.4 Further, as alcohol is normally being served while the vessels are on passage we are uncertain how a Licensing Standards Officer would be able to carry out their regulatory
obligations, such as premises inspection, unless they were prepared to spend a day and two nights travelling with our vessels to and from Shetland.

6. Conclusion

6.1 Whilst NorthLink applauds the general aims of the Bill, it does not consider that the Bill, as drafted, or its underlying policy, appropriate or practical for ferries. NorthLink already regulates the sale of alcohol on board its vessels through opening hour restrictions and staff training. To date, this self-regulation of our ferries has proved extremely effective. It is feared that the arbitrary and unworkable nature of some of the Bill’s sections would have a negative impact on the operation of vessels generally, and would create confusion amongst the public generally.

6.2 NorthLink believes that the very specific nature of ferries should result in them being dealt with separately under maritime law, and not as part of legislation applicable to land-based premises.

6.3 NorthLink would therefore commend these comments to the Local Government and Transportation Committee, and implore that they be taken into account going forward.

SUBMISSION FROM PERTH AND KINROSS LICENSING BOARD

On behalf of Perth and Kinross Licensing Board, Convener David Dow responds to Stage 1 of the Bill’s progress in relation to some particular aspects of the Board’s 2004 submission. The Board would request these are given further consideration and it thanks the Scottish Executive for this opportunity to so submit.

The Board wishes to state that it remains broadly in favour and supportive of the proposed Licensing principles and the objectives of the Bill.

Part 6
PERSONAL LICENCES

64 Notification of application to chief constable

The Board is concerned over the need for conviction. This is a departure from the ‘fit and proper’ current intelligence sharing between Board and Police. The Board understands its concern is also shared by Police Authorities. The Board considers the objectives of the Bill are considerably weakened by this dilution as it ignores general conduct and attitude towards licensing principles. Conduct consistent with the 5 licensing objectives should be wider than qualifications and convictions and as such this matter requires further consideration. In delivering its duty to the Licensing Forum the Board must also be able to require (rather than request) relevant localised statistical information of all its community planning partnering bodies.

68 Period of effect of personal licence

68 (1) The Board considers a 10 year licence as too long in terms of personal contact between Board and licensee. The Board is strongly of the opinion that Board and licensee should meet face-to-face at least once during a Board’s term of office. There are also financial implications to be considered with regard to the fixing of fees for such a long licence period. In its 2004 submission the Board stated it was of the opinion that premises licenses and personal licences should come before the Board for review/renewal every 5 years and 3 years respectively.
SCHEDULE 1
(Introduced by section 5 (8)
Licensing Boards

Convener
The Board requested in its 2004 submission that the Vice-convener where one exists should, as well as the Convener, be appointed for the duration of the Board term. The Board welcomes 6 and 7 in their entirety and asks that they be extended to Vice-conveners as well.

Proceedings
12 (1) The Board has proposed that membership should be limited to a maximum of 10. As such there was an expectation of a quorum of 5 and it considers a quorum of 3 as too low. It therefore requests that this matter is further considered and supports a 5 member quorum.

SUBMISSION FROM PUNCH TAVERNS

LICENSEING (SCOTLAND) BILL

I write further to my witness evidence given to the Committee on Tuesday 19th April, setting out my company’s position on the following issues. As you know, Punch Taverns owns some 450 public houses in Scotland, all of which are leased or tenanted and therefore represent 450 individual small businesses which hold individual liquor licences.

Transitional Arrangements
I am concerned that further thought needs to be given to this huge workload for both licence holders and local Licensing Boards in moving some 17,000 licences to the new regime. Experience south of the border within our own company is that the process has been slow and paperwork cumbersome. The main issue down south was that there was insufficient time between the date the regulations and paperwork were finally published and the date the first submissions were due. I would therefore ask the Committee to consider a longer period in Scotland for this process in order that the industry can prepare fully and ensure accurate and timely completion.

In England and Wales, the Government has also granted the licensed trade “grandfather rights” which we discussed on Tuesday. Tavish Scott has stated that automatically exempting a licence holder from new rules is a recipe for “no change” but it is vital that we give these small businesses some degree of certainty and stability through the change process. I would ask the committee to at least allow all existing hours to be transferred over. Any other issues can clearly be dealt with through the Operating Plan, which is already under the jurisdiction of local licensing boards in the Bill.

Equally, I would question the validity of re-submitting premises plans which are already held by Licensing Boards for existing licences.

Variations
Part 3, Section 27 of the Bill ‘Application to vary premises licence’ and Part 4, Section 53 ‘Occasional Licences’ refers

I do not believe that the word “significant” as outlined in this section adequately deals with such issues as occasional extensions (for example for a wedding reception) or a minor alteration (such as removing fixed seating within a public house). Surely the whole operating plan and premises licence does not need a major variation here, including all the fees and public notification process?

Also, will it be sufficient to highlight such major local events as Edinburgh Festival and Hogmanay extended hours within the operating plan?
Overprovision

Part 2 – Section 7 ‘Duty to assess overprovision’ refers.

I cannot see any additional need for a ‘duty to assess overprovision’. Surely the licensing principles already adequately deal with this issue? Local Licensing Boards are the experts here. If some national formula were applied, then how can it apply in vastly different areas e.g. Leith Walk in Edinburgh compared with Stornoway town centre. Surely the Boards are best placed to assess the needs of the community?

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.

Appeals

Part 9 – Section 122 ‘Appeals’ refers.

The Bill makes it clear that any suspension of a licence will have immediate effect, unlike the current system where the licensee has the right to trade whilst appealing the decision.

I would ask the Committee to reconsider this immediacy. As I said earlier, these are small businesses, and any closure period its likely to severely affect it’s financial stability or bankrupt it.

Should this not be reviewed, then I would ask that all appeals be dealt with within 7 days.

Training

I welcome the Bill’s stance on improved training for licence holders and managers. Within Punch Taverns, we operate award winning accredited training of some 14 days for all new licence holders under our ‘Modern Licensed Retailer’ course, which is run in conjunction with Motherwell College. This also includes the Scottish Licensees Certificate and Basic Food Hygiene Certificate and is accredited by the British Institute of Innkeeping. This training course is mandatory for all new retailers and I believe Punch are the only company in Scotland that insist on this.

I would ask that you accept this as an accredited training course under the new Bill’s recommendations.

We continue to deliver regular training to all existing retailers through our “Retail Experience” programme, which covers over 15 further areas which we consider important in a well run licensed premises. Indeed, in early April we trained over 130 retailers in “Profit Through Quality” at venues in Glasgow, Edinburgh and Dundee.

We are highly committed to training within Punch and are happy to share with the Committee further detail if it is required.

Fees

I am concerned at the current lack of detail on the proposed fee structure for the new licensing system. Whilst recognising that local council costs will increase given the expanded scope of the Licensing Standards Officers, I cannot accept that these small businesses should be burdened with vastly inflated fees for such a small change.

At Committee on Tuesday, you asked for suggestions from my company on how a fair fee system might be established. In this regard, I promise to write within 14 days of this letter with our thoughts.
Types of Licence

I was very surprised to hear that the Committee may be considering moving away from the original start point of just two licences; Personal and Premises, which I believe was discussed recently with the Scottish Licensed Trade Association. This would, I believe, be a retrograde step and against the very principles of reform.

Irresponsible Drinks Promotions

I very much support the Executive’s wish to tackle blatantly irresponsible promotions. My company already operates within the voluntary code of the Scottish Beer and Pub Association and British Beer and Pub Association’s “Guide to Responsible Drinks Promotions”. We are also signatory to the Portman Code.

I do, however, question why the off trade is not being similarly restricted? If it is irresponsible to run a promotion such as “buy one pint get a pint free” in a pub, then why is it acceptable to sell 20 cans of lager for £15 in a supermarket, or a 2 litre plastic bottle of strong cider for £1.25 in off licence? Anecdotal evidence from our retailers is that this contributes greatly to disorder when customers arrive at our pubs already drunk having consumed large quantities of such cheaply obtained off trade products at home or on the street.

I would ask that the Committee revisits the section applying to promotions within the off trade sector.

In summary, I have to say that the spirit of the Nicholson Report and the draft Licensing (Scotland) Bill is welcomed and supported in moving legislation forward into the 21st century. Our industry is keen to work with the Committee to achieve this and I am happy to act as witness to the Committee whenever required.

S. P. Allen
Regional Operations Director, Scotland
22 April, 2005

SUBMISSION FROM THE SALVATION ARMY

1 Introduction

1.1 The Salvation Army is a Christian Church and one of the largest charities in the UK, helping thousands of vulnerable people each day. Many of these people have experienced or are experiencing social, economic, health and relationship problems attributable to the misuse of alcohol. We would, therefore, support any legislative action that will alleviate the misery caused to so many by excessive alcohol consumption.

1.2 The Salvation Army also recognises that many people use alcohol for social and recreational purposes and would not condemn such use.

1.3 It should be stated that The Salvation Army requires total abstinence from its members and regards this as a positive lifestyle choice. Each member freely accepts this requirement and can testify to the many beneficial effects of an abstinent lifestyle.

2 General Response

2.1 The Salvation Army broadly welcomes the Licensing (Scotland) Bill and commends the Executive for the way in which this legislation has been approached.

2.2 We welcome the inclusion of the five “licensing objectives” and recognise that this provides a strong value base for the enacting of this legislation (Pt 1:4)
2.3 We welcome the inclusion of “mandatory conditions” for premise licences (Pt 3:25). These requirements should ensure that local licensing boards become pro-active in ensuring that both applicants and premises are compliant before the issuing of a license. We agree with the limitations on pricing and irresponsible promotions and would argue that cognisance of the licensing objectives should remove irresponsible promotions from the industry.

2.4 We agree with the conclusion that the granting of “occasional licenses” should be subject to the same mandatory conditions (schedule 4)

2.5 We welcome the inclusion of mandatory training for license board members (schedule 1:11)

2.6 We also welcome the requirement for staff training (schedule 3:6) but would argue that this provision should include all staff that participate in the selling of alcohol, including casual staff.

2.7 We agree with the “presumption against 24-hour opening in Scotland” and welcome this statement in the Bill. We advocate that 24-hour opening would go against the 5 licensing principles upon which this bill is predicated.

2.8 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.

2.9 We recognise and accept the intention of the legislation to offer protection to children in the list detailed offences (pt 8). However, we would argue that to uphold the licensing objective of “protecting children from harm”, children (under 16 years) should be excluded from premises where the sole purpose is the sale and consumption of alcohol.

2.10 We welcome the reference to offences of drunkenness and disorderly conduct (pt 8) but would argue that the proper implementation of the licensing objectives should reduce the level of offending. We would support any evaluation of the law, when enacted, that would measure the impact upon the statistics.

3 Conclusion

3.1 The Salvation Army is broadly supportive of the Licensing (Scotland) Bill which has much to commend it. However, The Salvation Army has concerns about some aspects of the Bill which if addressed further could improve the overall direction of the Bill.

Alan Dixon, Major
Assistant to the Scotland Secretary
01 April 2005

SUBMISSION FROM THE SCOTTISH ASSOCIATION OF ALCOHOL ACTION TEAMS

The Scottish Association of Alcohol Action Teams (SAAAT) is a voluntary association representing all Alcohol Action Teams (AATs) or their equivalents. AATs are multi-agency teams working at local level to reduce the harm caused by alcohol. The main aim of the Association is to represent local Action Teams as a body and provide a channel through which government (centrally and nationally) may obtain the views of the Association’s membership on major policy areas or issues of collective concern.

We welcome the recommendations of the Licensing Scotland Bill 2005 and, in particular, the five licensing objectives, the rewording of the fourth objective on public health i.e. “protecting and improving public health”, the introduction of premise licences that replace the 7 types of licences and the new personal licence. However, the SAAAT has concerns regarding the sale of alcohol from premises previously referred to as ‘off-sales’.
These concerns focus on:

- the pricing of alcohol
- irresponsible drinks promotions relating to “off-sale” premises
- the sale of alcohol to young people (16/17 year olds)
- anti-social behaviour that occurs in the vicinity of shops licensed to sell alcohol
- the training of sales staff.

**Pricing of alcohol**

Under Schedule 3, paragraph 7.2 states that “the price at which any alcohol is sold on the premises must not be varied during the period of 48 hours with the time at which the price at which that or any other alcohol is sold on the premises was last fixed”. However, the preceding paragraph confines that regulation to alcohol to be consumed on the premises and it will not be applicable to off-sales premises.

In recent years, there has been an increase in the amount of alcohol sold in off-licences from 26% to 40% of total alcohol sales. We recognise that there are several contributory factors for this shift; we consider that one of the strongest is the cost of alcohol. Many people now commence drinking alcohol before embarking on an evening out with one of the reasons for this being the high cost of alcohol in many pubs and clubs. Restricting the availability of promotions in on-licensed premises will be perceived as creating an even higher cost for alcohol and may cause a greater shift to off-sales.

**Irresponsible drinks promotions**

In our response to the consultation on the White Paper, the Association stated it would wish to recommend a condition which aimed to stop irresponsible promotions. This appears to have been taken on board for on-sales but nothing has been put in place to regulate off-sales. A particular concern is with high volume suppliers such as supermarkets, which can be considered to encourage excessive drinking through deep discounting of beer or wine. An example of this is of beer being sold for as little as 37p for a 330ml can of Pilsner (4.95% abv). By comparison, a 330ml of Coca Cola would retail between 40p and 45p. Other promotions include 50% discount on wines, offers such as 3 litres for the price of 2, or buy one get one free.

The Association would strongly urge the Committee to consider the application of price regulation to off-sales premises.

**Sale of alcohol to young people and anti-social behaviour that occurs in the vicinity of shops licensed to sell alcohol**

There is little research evidence to indicate that an increase in anti-social behaviour occurs in the vicinity of shops licensed to sell alcohol. However a trawl of local media and anecdotal information from residents of local communities provide illustrations of the types of problems that occur around these types of premises. These were recognised by the Daniels Committee.

In order to inform further the debate, the SAAAT has recently commissioned a literature review on the sale of alcohol in the community that seeks to clarify:

- the prevalence of selling to underage drinkers (aged under 18 years)
- the existence (or otherwise) of evidence that cut-price drinks promotions encourage harmful or hazardous drinking
- increased anti-social behaviour around off-licences
- evidence of the effects that an off-licence can have on the community in general
- evidence of effectiveness of training for off sales staff

We would be pleased to share the findings with the Committee.

It is the view of the Association that further research requires to be carried out in order to glean a wider view on this issue that cuts across all the licensing objectives.
Staff Training

In respect of training for those who sell alcohol in shops, there appears to be a variance in the uptake of training across the country.

A recent telephone survey of ServeWise Plus off-sales trainees revealed that staff consider the licensing law as irrelevant to sales in the community, and perceive alcohol as just another commodity in a way that does not require special attention.

Whilst the Bill recommends ‘staff may not sell alcohol or serve alcohol for consumption on the premises unless they have been trained’, this does not seem to apply to those employed in shops. In addition, the high number of temporary staff employed in off-sales and on-sales indicates that training of staff considered ‘permanent’ i.e. more than 4 months full time or part time employment, will not be sufficient to ensure adequate knowledge amongst serving staff at any one time.

Conclusion

We welcome the modernisation of licensing legislation but would urge the Committee to review the varying treatment of “on and off sales” of alcohol to ensure that the licensing objectives can be upheld fully.

The Scottish Association of Alcohol Action Teams
20 April 2005

SUBMISSION FROM THE SCOTTISH ASSOCIATION OF BUILDING STANDARDS MANAGERS

In making this submission, the Scottish Association of Building Standards Managers (SABSM) is pleased to have this opportunity to provide written evidence to the Local Government and Transport Committee on the Licensing (Scotland) Bill.

The Association are fully in support of the aims to improve the operation of the licensing system in Scotland.

Although the following submission reflects some of the concerns the Association have, in general terms at least, the Bill as presented reflects the view members of the Association have that everything possible should be done to encourage licensees [premises managers] to have due regard to the physical nature and condition of their premises as well as controlled use in terms of numbers of occupants and type of activity.

I trust these comments are helpful.

Len Murray
Secretary
on behalf of the Scottish Association of Building Standards Managers
22 April 2005

1. INTRODUCTION TO THIS PAPER

The Scottish Association of Building Standards Managers (SABSM) is a body comprising principal officers responsible for delivering a professional Local Authority building standards service. This submission has been prepared by SABSM in conjunction with its members.

A number of the proposed changes to the licensing legislation have significant relevance to the work of Local Authority building standards services in terms of

- The licensing objectives
- General functions of Local Licensing Forums
- Statements of licensing policy
- Licensing Standards Officers
2. OBSERVATIONS BY THE ASSOCIATION:

a) The licensing objectives
1. The Association fully supports the specific objectives of securing public safety and of protecting and improving public health. These objectives lie at the core of the Building Standards system in Scotland. Local Authority Building Standards have a duty under the Building (Scotland) Act 2003 by definition to:-
   ▪ secure the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings.

2. The Association are firmly of the view that it is incumbent on the proposed Licensing Boards, Licensing Forums and, indeed, the proposed Licensing Standards Officers to have robust protocols in place with all 32 Local Authority Building Standards services to properly facilitate the objectives of both the Licensing (Scotland) Bill and, indeed, the Building (Scotland) Act.

b) General functions of Local Licensing Forums
1. In fulfilling their function of giving such advice and making such recommendations to that or any of those Boards in relation to those matters as the Forum considers appropriate it is the Associations view that the current, and future, resource which is available within the local authority building standards services should be fully utilised in relation to recommendations likely to impact on the adequacy of the physical condition of licensed premises and in their proper use.

2. By doing so the role and relevance of the decision making processes of the Licensing Boards must be enhanced as indicated under Section 12 of the Bill.

c) Statements of licensing policy
1) As before, the resource which is available within the local authority building standards services should be fully utilised in relation to determinations of policy based on information, statistical and otherwise, from the readily available expertise which currently exists in the various building standards services.

d) Licensing Standards Officers
1. While the concept of the Licensing Standards Officers is understood, the Association have some concerns in relation to the potential duplication of role when considering the enforcement powers vested in local authority building standards to ensure compliance with building regulations in licensed premises.

2. Consequently, the Association would re-iterate it's views expressed above that robust protocols must be in place with all 32 Local Authority Building Standards services to properly facilitate the objectives of both the Licensing (Scotland) Bill and, indeed, the Building (Scotland) Act.
3. Additionally, when cognisance is taken of the empowerment to issue non-compliance notices under Section 14 of the Licensing (Scotland) Bill there must be an understanding and a relationship between the local building standards services and the Licensing Standards Officers.

4. Finally, it is noted that under the Housing (Scotland) Bill currently being considered by the Parliament, there is a requirement that any notices issued under the Housing legislation must be recorded in the Building Standards Register, referred under Section 24 of the Building (Scotland) Act 2003—see below. Is there any intention to similarly record licensing enforcement activity in this Building Standards Register given the property database principles of such a register? If not why not?

Building standards registers

(1) Every local authority must keep a register (a "building standards register") for the area of the authority containing information in relation to—
(a) applications for building warrants and amendments to building warrants,
(b) the manner in which such applications have been dealt with, and
(c) completion certificates and their acceptance or rejection.

(2) The Scottish Ministers may by regulations make provision as to—
(a) matters, in addition to those specified in subsection (1)(a) to (c), in relation to which building standards registers are to contain information,
(b) the information which such registers are to contain,
(c) the form and manner in which such registers are to be kept.

(3) Regulations under subsection (2) may also make provision for—
(a) building standards registers to include copies of plans, specifications, estimates of costs, certificates issued by certifiers and other documents,
(b) the removal from such registers of all or part of entries relating to applications, and things relating to them.

(4) Building standards registers must be kept open for public inspection at all reasonable times.

e) Premises licence
f) An operating plan for the subject premises
g) The certificates required by section 48
h) Provisional premises licence
i) Temporary premises licence

1. The principle of the “operating plan” proposals is fully supported. The Association would, however, stress that fundamental to the success of framing an effective “operating plan” reliance must be placed on an input from Building Control / Building Standards to fully address the issues of public safety and public health in association with our colleagues in the Fire Authority and Environmental Health. The Building Control expertise lies in the assessment of adequacy of the building fabric and specifications having regard to the building type and the numbers of people likely to use or frequent such buildings.

2. The Association would urge Parliament to recognise the Building Control role and expert contribution it can make to complement the role and contributions from others such as the Fire Authority and Environmental Health.
3. The Association would argue that the relationship between the licensing regime and building standards/control should operate in the form of partnership working to address the implementation of safe buildings. Such partnerships must, of course, include the Fire Authority and Environmental Health. This could perhaps be addressed by setting up joint “professional officer forum” within local authorities under the auspices of the proposed Licensing Standards Officer.

4. To this end, the Association would respectfully ask Parliament to consider the aims and objectives of the soon to be implemented Building (Scotland) Act 2003. Local Authority Building Control / Building Standards will have a dual role:

- to fulfil their “verification duties” under the building warrant processes, BUT
- also to fulfil their “enforcement duties” in terms of their wider remit to ensure compliance with minimum building standards and to ensure the existence of safe buildings.

5. Additionally, one of the primary aims of the new Procedures Regulations under the Building (Scotland) Act 2003 is to encourage / require a wider consultation process with related enforcement authorities including the Fire Authority and Licensing Bodies. To allow this aim to be met the Association would argue that the need to consult cannot be one-sided. There must be recognition by these other related enforcement bodies that building control / building standards have a significant role and expertise to offer and to contribute.

6. Fundamental to this understanding must be the legal requirement that the use of buildings rely on an approval of adequacy under the Building (Scotland) Act as well as the Planning Acts. Any premises which are to be licensed MUST have such approvals in place, either historically or, for new build, through the building warrant process.

7. The Association are mindful of the dangers of overly bureaucratic procedures to address this need for consultation together with the need for adequate resourcing and would encourage discussion with the Executive either separately or in a joint forum with related enforcement bodies to fully examine the opportunities and constraints in rolling out the new procedures for “operating plans”.

8. The Technical Standards relating to the new Building (Scotland) Act 2003 apply minimum criteria to building standards within buildings to safeguard the users of buildings all of which are duly assessed for adequacy through the “building warrant” process administered by Building Control. Such standards include reference to the use of a space as a bar, dance floor, restaurant etc, all of which have a different occupant load factor which dictates the safe occupant capacity. Similarly, issues such as adequate ventilation and the number and location of toilets and washrooms for the users are addressed as part of the building warrant process. As a licence application will no longer have this type of description, it will be necessary for building control, when issuing a “relevant certificate”, to be able to ensure that the “operating plan” and any relevant drawings, relate to the approved “building warrant” proposals.

9. It is noted that whilst the majority of those consulted supported the proposed fire certificate and safe maximum capacity specification, “Fire Boards were concerned at how this sat with the current fire prevention
policy and the fact that maximum safe occupancy levels are at present the responsibility of Local authority building control sections”.

10. The role of assessing the maximum safe occupant capacities of a proposed or existing building is a core statutory function of building control. The role of assessing new premises for fire and safety and the maximum safe capacity begins with the submission to a Local Authority building control office to check compliance with the Technical Standards. Consequently, the Association would welcome an opportunity to provide detailed comment on this issue to ensure licensed premises achieve appropriate safeguards.

11. Furthermore, an application for the variation of a Premises Licence should be required for alterations and include the need to have all necessary consents including a Building Warrant and Completion Certificate where appropriate.

12. It is welcomed that the following conditions apply to all Premises Licences:

- an application under subsection (1) must—
  (a) contain a description of the subject premises, and
  (b) be accompanied by—
    (i) an operating plan for the subject premises,
    (ii) a plan (referred to in this Act as a “layout plan”), in the prescribed form, of the subject premises, and
    (iii) the certificates required by section 48(1).

- and that the plans should include the proposed function of all areas and confirmation that the functions correspond to the documentation utilised by building control when assessing “building warrant” applications

13. When it is proposed to change a previously agreed “operating plan” then the Premises Licence will require to be revised and if the revisions have an affect on the occupant capacity of the premises or physical alterations are proposed, then building control should be consulted to check compliance with the Building (Scotland) Act.

14. Finally, it is welcomed that the provision of the Provisional premises licence and Temporary premises licence recognises the Building Standards/Control position and the Association are content that the procedures are workable provided the previous comments in relation to robust protocols, consultations and partnership working are taken cognisance of to use the current expert resource which exists within Building Standards Services in all of Scotland’s 32 authorities.

SUBMISSION FROM SCOTTISH GOLF UNION

1. Introduction

The Scottish Golf Union (SGU) is the governing body for golf in Scotland. The SGU represents over 680 golf clubs and 540 golf courses throughout Scotland. The total membership of our member clubs is over 250,000 with an additional 300,000 individuals playing at least once a month in an industry worth £400 million per annum to the Scottish economy.

The SGU directly represents the interests of golf and speaks on behalf of those involved in the amateur game in Scotland.
The SGU appreciates the opportunity to submit written evidence to the Local Government and Transport Committee on the Licensing (Scotland) Bill. At present registered clubs are covered by Part VII of the Licensing Act (Scotland) 1976. The current arrangement for registered clubs is that they are granted a licence to sell alcohol by registration which is granted by a sheriff. However, the SGU appreciates the need to update the legislation governing clubs and welcomes the exemptions in relation to clubs that have been incorporated into the Bill.

The SGU also gave evidence to the Expert Group on Licensing Reform.

2. The Bill in Detail

The SGU was particularly concerned by the possible impact that the Bill could have on smaller clubs who do not have full-time or permanent members of staff. The main concern relates to the qualification requirements. Many of our smaller clubs who play a significant role in tourism, particularly in rural areas do not have a turnover sufficient to merit training and qualifying a member of staff and indeed may not be able to afford to do so. Under the Bill as currently drafted, the Scottish Executive will have the power through secondary legislation to define the categories of clubs that the above exemptions would apply to. The SGU would suggest that a threshold based on turnover should inform the decision on which clubs are covered by Section 117.

As outlined above many of our concerns have been addressed by Section 117 of the Bill which prevents certain sections of the Bill from applying to members clubs. The SGU welcomes the exemptions outlined below in relation to clubs, and views them as being vital to ensure the continued viability of many clubs. The exemptions are as follows:-

- Requirement for the operating plan to contain information as to the premises manager (Section 19(4)(d))
- Ground of refusal of premises licence variation application relating to overprovision (Section 28(5)(c))
- Requirement for there to be a premises manager for licensed premises (Schedule 3, paragraph 4)
- Requirement for sales of alcohol under premises licence to be authorised by a personal licence holder (Schedule 3, paragraph 5)
- Requirement for sales of alcohol under certain occasional licences to be authorised by a personal licence holder (Schedule 4, paragraph 4)

3. Fee Levels

The SGU has a primary interest in the local authority charges for the new licensing of premises which serve alcohol and the process by which the Club Premises Certificate is achieved.

While the SGU recognises that at the present time there is nothing specific included in the legislation which would suggest that the fee levels would increase, there is a concern that the situation in Scotland could soon mirror that of the legislation in England and Wales. This could result in certification costing a golf club up to £725 plus a rateable annual fee of approximately £225 depending on the size of the club. This compared to the current situation where the fees which are paid will cover the club for a five year period.

According to Scottish Golf Union research, it has been suggested that club turnover should be in excess of £40,000 per annum before it would be necessary to apply for a premises license. This is because a golf club were to have a turnover of any less than that £40,000 it would make it almost impossible to afford a full-time member of staff, and could also place the smaller clubs are at a distinct disadvantage in relation to their operational viability.

The SGU is keen that the Scottish Parliament recognises the difference between licensed premises which do not operate on a club membership system and golf clubs whose takings from the sales of alcohol are significantly lower than a night club, for example.

These additional charges would be an additional burden on golf clubs across Scotland and could carry serious financial implications.
4. **Social Implications**

The SGU recognises that there are issues surrounding the health of the nation, the implications of binge drinking and anti-social behaviour associated with alcohol consumption among other serious issues. However, it is hoped that the Scottish Parliament will note the differences between an establishment with a membership role and one without.

It would be fair to suggest that it would be less likely for members of a private golf club to be involved in disorderly behaviour on site as they would be subject to having their membership revoked, which in turn would cost the individual money and could also harm their reputation when trying to renew their membership or when applying for membership at another establishment. This would be more difficult to police in an inner-city bar, for example, where staff do not know every person drinking on site personally.

There is the added issue that inappropriate behaviour on club premises would lead to the individual losing access to playing golf which is the primary purpose they belong to the club.

A further issue is the threat of underage drinking. In golf clubs the age for junior membership is standard at below 18 years of age. Therefore the age of junior members will be known to bar staff and they will not be served alcohol.

Further, many young people come to golf clubs with a parent or responsible adult, which also makes it less likely someone under the legal age limit to attempt to buy alcohol on site.

The nature of golf clubs across Scotland is that on the whole, they are self-policing, which could suggest that certain issues included in the Bill do not apply.

5. **Summary**

In conclusion, the SGU broadly welcomes the proposed Licensing (Scotland) Bill as it raises some fundamental issues which need to be addressed regarding alcohol sales and consumption in Scotland.

However, the SGU wishes to stress that the issues raised in this document are of great importance to the golf industry in Scotland and hopes that the Committee will seriously consider the points which have been raised.

The SGU is fully prepared to appear before the Committee if required to discuss any of the issues that have been raised in this submission.

**SUBMISSION FROM THE SCOTTISH GROCERS’ FEDERATION**

**Licensing Fees**

We have prepared and are submitting two papers showing a comparison between the current system of licensing fees and the cost of any future system based on our proposed bandings and charges.

We have given the matter of bandings and charges some considerable thought and these are shown under Schedule TA1 based on what we are aware of on the proposals based on the Licensing (Scotland) Bill as annotated in Schedule TA2.

The reasoning behind the new non-domestic rateable value bands and the proposed license costs are as follows:

1. Band A represents the threshold at which the first Small Business Rates Relief Scheme pertains to. Band B is the second banding in the Small Business Rates Relief Scheme (£11,501 to an upper limit of £29,000). Thereafter we have detailed a further five bands from C to G uplifting them by 100% at a time.
We are obviously aware that bands C to G do not exist in practice but are nevertheless a good model to follow as they spread any proposed fees evenly across non-domestic licensed properties throughout the country.

2. We have taken into consideration the fact we believe, that the first year and set-up of the new system will incur the largest costs and are therefore proposing all licensed premises pay an upfront charge of twice our proposed annual fee. Again, the uplift from band to band is 100%, i.e. doubling each time, and this we again believe creates consistency and an even spread throughout licensed premises.

3. Currently under the existing system licensed premises pay an annual fee of around £30. We are realistic enough to know that these costs will have to rise to pay for the extra facets outlined in the new system including the employment of Local Licensing Standards Officers. We therefore propose doubling the annual basic fee for the initial band A licensed properties. Thereafter we will again enhance the fee by 100% throughout our bandings to evenly spread the cost of this charge throughout the licensed premise estate in Scotland.

These proposals have the following benefits:

1. They are based on the sound commercial practice of ensuring consistency and are applied consistently against rateable value bands which are linked at the outset to a Scottish Executive business rates policy already in existence.

2. It recognises that there must be a significant increase from the current system to the proposed system.

3. It recognises that significant upfront costs (four times the annual fee) will need to be paid at the outset.

4. The spreadsheets included, numbered Appendix A1 and A2 are projected costs to be incurred by two of our members under the proposed system versus the current charges under the old system. Appendix A1 assumes an average cost of legal fees for administering licensing matters of £100 or just under £2 per week, but they do not take into account any staff training costs (which we know will be significant and much more under the proposed system) and they also assume that there will be no requirement in legislation to publicly advertise an application or a variation. Appendix A2 assumes an average cost for legal fees of £140 per annum. This is in line with the most recent legal fees received from the company’s solicitors. In addition, training costs have been incorporated into the proposed system based on the following: All shop managers, assistant managers and supervisors are trained on a 3-yearly basis to certification level at a cost of £60 per person. Additionally built in to this is cyclical training every 2 years to reflect staff turnover. Appendix A1 exhibits an increase annually of 197.3% and Appendix A2, which is charging more of the hidden costs, reflects an increase of 214%.

Transitional Arrangements
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.

We would therefore propose that we have a transitional period of one complete calendar year wherein each month all licenses up for renewal for the twelve quarters of the following three years are transferred to the new system automatically ensuring that by the end of the 12-month period all licenses will have been updated accordingly.

The matrix below outlines a proposed conversion period of one year starting on 1st July 2007 and finishing on 30th June 2008.
### TRANSITIONAL ARRANGEMENTS – PROPOSED CONVERSION TABLE

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<th>Current Renewal Date (quarterly meetings)</th>
<th>Transition Month</th>
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<th>12 Months</th>
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This proposal has the following benefits:

1. It will ensure that licensing authorities will be able to recruit for one year only to deal with the extra workload, likewise license holders can do the same.

2. It will ensure that planning and scheduling can be organised in accordance with validity dates on your current license. This will go a long way to ensuring that the licensed premises will have:
   a. compliant operating plans
   b. fully trained and operational premises managers and staff
   c. will have the operational procedures in place which will make it easier to ensure businesses with more than one premise will be able to operate under two policy systems for a maximum of 12 months depending upon the current renewal date.

### Conclusions

This proposal should be conditional on either of the following:

1. The ‘Big Bang’ conversion should take place at the end of this 12-month transition period.

2. Alternatively, we must have one continuous ‘grandfather right’ for all licenses for the 12-month period and that is: operating hours must remain the same as they are currently until the end of the 12-month transition period, otherwise newly converted licensed premises could gain either a commercial advantage or disadvantage during this period. It could also cause serious operational problems.

3. We would also ask for clarification regarding exactly how the transition from the current system to the new Premises License will be regulated. In Part 3, Section 48 of the Bill, it states that a Premises License Application must be accompanied by a) a Planning Certificate, b) a Building Standards Certificate, and c) a Food Hygiene Certificate (where applicable). Will this be required at transition or will it be assumed as a Grandfather Right from the old regime to the new regime? In respect of the Food Hygiene Certificate, will this be required for the sale of food stuffs in what is currently deemed as off-license premises? Should the above be required at transition then this must be publicised a full twelve months prior to transition in order that any relevant paperwork is acquired and lodged prior to the proposed date of transition.

### Promotions

We understand the Scottish Executive Licensing Team is commissioning research into the effects of off-trade promotions. We believe that the Scottish 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-license promotions. Appendix A3 of our evidence shows that the total percentage of alcohol sales on promotion is only 1.78% of the total over a three month period by volume, and only 3.5% of total sales by retail sales value over the same three month period. In addition we can demonstrate that the retail sales of alcoholic drinks as a percentage of total sales is actually diminishing year on year in Appendix A4, based on the figures (both wholesale and retail) in a comparison from May 2003 to March 2004 and May 2004 to March 2005, the reduction between wholesale and retail being around minus quarter of a percent. 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.

We would also like to clarify the position on other misleading statements which have arisen. There was a specific mention by the Minister regarding the sale of Buckfast Tonic Wine. We have evidence, based on a survey carried out in the Cumbernauld area in March 2005, to support the fact that the average age profile of a Buckfast Tonic Wine drinker is 34 years (see Appendix A5). This again counteracts any hearsay evidence that this product sold through off-licenses is the route cause of underage drinking and anti-social behaviour. In conclusion we would ask you to consider this hard evidence which supports our premise that there is much less incidence of underage purchasing and alcohol problems within the small shop sector than is currently regarded based on hearsay evidence. We welcome any study of promotional activity and believe strongly that this will demonstrate there is no linkage in the retail sector between promotions and excessive consumption.

We are relaxed about a proposed minimum period for promoting alcohol products and would be happy to see a minimum period of 72 hours and we are also relaxed about controls on the packaging, whereby an extra 25% free is no longer permissible.

In conclusion we believe there is really no case to answer regarding promotions in the off-sales sector, and we believe this will be borne out in your study. You may wish to beef up the impact the Advertising Standards Agency have on advertising campaigns and we would be comfortable with this. However we do not believe there is any evidence to sustain the premise that normal national promotion of alcohol products is the root cause of excess consumption by, in particular, young people.

Training
Training, according to the new Bill, will be mandatory for personal licence holders, managers and all permanent members of staff serving or selling alcohol.

Refresher training for a personal licence holder will be required to be taken every 5 years. Members of staff will become permanent once they have worked for 4 months in licensed premises cumulatively. This is a potential significant cost to the industry and as such we believe that training for premises managers, permanent members of staff and refresher training for personal licence holders has got to be:

a. internet based for ease of access, and no requirement to leave the premises.
b. at a minimal cost.
c. marking and accreditation must take place within a very short timeframe, i.e. 24 hours.

All of the above will ensure costs will be minimised but the Act should set a maximum cost.

Overprovision
There will be a test of overprovision produced which will not affect existing premises but will undoubtedly have a bearing on new builds or extensions in future business estates. We think it appropriate to ask if there could be different measures for overprovision in the off-trade in opposition to the on-trade in that you could have an ideal location for a new convenience store but due to the fact there are 3 pubs already on the same street, your application is refused. This
should be set by the National Guidelines and be referred to by local Licensing Boards in their decisions.

**Licensing Hours**

Finally, you should be aware that south of the border all superstores which currently trade 24 hours have applied en block for 24 hour licensing, and as such are pushing the boundaries of licensing trading hours to the limits. 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.

**Excluded Premises**

We are extremely worried that petrol stations with attached convenience stores could be deemed under Part 9, Section 115, to be Excluded Premises. Section 115, 2b states that Excluded Premises means premises used primarily as a garage or which forms part of premises which are so used. 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.

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.

**Premises**

It must be confirmed in the Act that there will be no designated area for alcohol sales in smaller retail units. Currently it is proposed that this will be included as a discretionary national license condition. SGF maintains that this will be unworkable and should be scrapped.

**Ethnic Minorities**

A number of our members come from an ethnic minority background and their first language is not English. The new licensing regime must ensure that these people fully understand and comply with the new system by informing them in literature and other materials which will be printed in other appropriate languages. Likewise, this must be covered in training.

**SUBMISSION FROM SCOTTISH INTERCOLLEGIAL GROUP ON ALCOHOL**

Medical Royal Colleges working together to address the problems of alcohol in society

The Scottish Intercollegiate Group on Alcohol was established by the Medical Royal Colleges and Faculties in Scotland to provide an expert and co-coordinated source of advice and action on the effect of alcohol on individual and public health.

The group’s appointed members and our constituent bodies have contributed to alcohol and health policy, including alcohol licensing, in Scotland for over 30 years and we are pleased to have the opportunity to contribute to the development of the Licensing (Scotland) Bill.

The approach of outlining Licensing objectives is a feature of the Scottish approach. In particular the objective of protecting and improving public health is most welcome. This acknowledges the crucial influence of Licensing policy and practice on the levels of alcohol related harm in communities and we wish to assist the process of meeting this key objective (Chief Medical Officer 2005).

There is much in the Bill which we welcome:
• The requirement for Boards to formulate a Licensing policy, including assessment to prevent over-provision of licenses.

• The development of licensing forums at National and Local level.

• The commitment to a more informed and responsive licensing system through improved training, the introduction of operating plans, liquor licensing standards officers and a more effective response when the law is broken.

• The introduction of a single premises license is consistent with the evidence that the contribution of different parts of the alcohol sector (what was known as the “on and off trade”) to harm cannot be differentiated and this offers the opportunity for an integrated view of the whole of licensing practice.

CONTEXT

While Scotland has long had an unenviable reputation for alcohol misuse, before the 1980’s we could argue that this reputation was not justified. On the standard internationally recognised indicators of alcohol related deaths and alcoholic liver disease, we had comparatively low rates. Over the past 25 years, however, the situation has changed considerably. The graph (ISD 2005) below show the 3 fold rise in alcohol related death rates in both genders in Scotland since 1980.

Other reliable measures of harm, such as rates of liver disease, oral cancer rates, and hospital admission rates for alcohol dependence also show a consistently upward trend.

Harm to individuals and communities through public disorder, family disruption and immediate short term health harms related to trauma and intoxication will lead to a greater overall community burden than chronic illness. However, we wish to draw attention to trends in these well defined chronic health problems because we believe these are the most reliable measures of overall trends of alcohol related harm and because the issue has been relatively neglected in Scottish alcohol policy.

WHOLE POPULATION APPROACH

There is a high level of awareness of worrying trends in young people and children’s drinking. The changes in patterns of consumption and harm in women has also had a considerable level of attention. However, the increase in alcohol related health harm has occurred at similar rates in men and women and across all age groups. The numbers of people over the age of 65 being admitted to hospital with an alcohol related diagnosis in Scotland exceeds the number under the age of 24. (NAIR Local Alcohol Profiles)

The Public Health effects of alcohol are prevalent across age, gender and social deprivation groups and the Licensing system must ensure effective measures to reduce harm across the whole population.
DRINKING STYLES

The Bill and accompanying papers make reference to problems associated with “binge drinking” which includes a consideration of duration as well as level of consumption. This reflects the importance of intoxication in much of alcohol related harm. However, by no means all of alcohol related illness is related to intoxication and an exclusive focus on “binge drinking” as defined in the Policy Memorandum will not help to tackle many of our serious alcohol related public health problems.

INTERNATIONAL LESSONS

These upward trends in Scotland have been mirrored in the rest of the British Isles. This is in contrast to many other countries where rates of alcohol related harm have fallen. In 1980 UK cirrhosis rates were \( \frac{1}{7} \)th of the EU average. Trends since then suggest that UK rates will shortly overtake the EU average as rates in the rest of Europe fall. (Prime Minister’s Strategy Unit 2003)

With regard to overall consumption, the UK has become one of the heaviest drinking countries in the world. (WARC 2004) Industry data show that the UK is now 9th heaviest drinking country for which data is available. In 1990 the UK was out with the top 20. Over the past 10 years we have passed Australia, New Zealand, Netherlands, Belgium, Denmark and Austria in the consumption “league table.”

Countries which have reduced consumption and alcohol related harm have employed a range of strategies and these have recently been subject to an effectiveness review by the World Health Organisation. (Babor 2003)

This showed the most powerful harm reduction effects from

- Action on low pricing
- Reducing availability by enforcing restrictions such as age limits and controlling outlet density (over-provision)

Server training and safer environment policies had a mid effect. Education only strategies and warning labels or responsibility messages had a low effect.

The Licensing (Scotland) act has thus considerable potential to reduce alcohol related harm if the opportunities for action on inappropriate promotions (in particular low price,) on overprovision and server training are utilised.

ACTIONS

The Scottish Intercollegiate Group on Alcohol recommends action in the following areas:

1) Clarification of the function, powers and membership of the National and Local alcohol forums. For instance, while we welcome the provision that Licensing Boards will take action against licensees whose conduct is inconsistent with the licensing principles, guidance on the definition of conduct which is inconsistent with the protection and improvement of public health will require to be developed and the National Forum is well placed to undertake this work.

These bodies must be well informed on trends in the alcohol field. The work of the National Alcohol Information Resource (NAIR) of the Information and Statistics Division of NHS Scotland has provided valuable support to the National Plan for Action on Alcohol and should be a key source of data to the Licensing system.

2) There is strong international evidence to suggest that the falling relative price of alcohol has been a major factor in the increase in alcohol related harm in Scotland. Low price has a particularly powerful effect on young people and children’s drinking. Alcohol sold at low price is thus not consistent with the licensing principles and constitutes inappropriate promotion and sale of alcohol and consideration of and action on price in all sectors of the
The focus on the protection of children is welcome in the light of Scotland’s poor and deteriorating record on alcohol abuse in young people and children. The requirement for premises to meet suitability criteria in order for children to enter premises is consistent with this focus. A no proof no sale purchase policy provides an important safeguard. However, studies have shown that much of children’s abuse of alcohol is through alcohol purchased by those of legal drinking age. An important barrier to children’s access to alcohol is ensuring an appropriate relative price and action on excessively cheap alcohol (see above para) is essential to the protection of children.

4) We welcome the acknowledgement of the importance of identifying and preventing over-provision, which has been shown to have an important effect on alcohol related harm. This is a complex area, but is essential to an effective Licensing framework. We encourage the examination of international evidence and practice on the issue of overprovision.

5) In the words of the World Health Organisation, alcohol is “No Ordinary Commodity.” This is the key principle which determines the need for effective liquor licensing. We believe this should also be a key principle governing access to alcohol. For this reason we welcome the provision that there be separate display areas for alcohol in off sales. While we recognise the different expectations for large and small stores, we do not believe that the devising of an appropriate formula is so difficult as to mean that this can only be a voluntary condition.

6) The establishment of the National Licensing Forum offers the opportunity for Health Organisations such as the Royal Colleges and Faculties to continually inform the monitoring of the effect of licensing changes and we believe that the prompt establishment of credible, effective and influential forums at local and national is of the highest priority. We welcome the direct involvement of Ministers in leading the National Forum.

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SUBMISSION FROM SOUTH AYRSHIRE LICENSING BOARD

South Ayrshire Licensing Board has provided comments during the earlier consultation process leading up to the Nicholson Report and has argued that a Review of the Licensing (Scotland) Act 1976 was required. The Licensing Board in South Ayrshire generally supports the proposals in the Bill and in particular:

- the clear statement of Licensing Objectives.
- the retention of Licensing Boards.
the requirement on each Board to formulate and publish a Statement of Licensing Policy for their area.
the creation of a Local Licensing Forum and the requirement for the Board to interact with the Forum.
the new role for Licensing Standards Officers and the emphasis on maintaining standards and complying with Objectives/Policies.
the requirements for training of licenceholders and staff and of Board Members.

The South Ayrshire Licensing Board's position is one of support for this Bill and for what it is trying to achieve. The following points are raised constructively to assist in consideration of the terms of the Bill:-

1. **Overprovision**

   It is accepted that decisions on this issue should be taken by Licensing Boards addressing the local circumstances. However, the concept of ‘capacity’ is introduced. A definition of ‘capacity’, or at least of how it is to be calculated/determined, is required.

2. **Local Licensing Forum**

   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.

3. **Operating Plans**

   These will require to be submitted along with applications for Licences. Licenceholders do not seem to appreciate the responsibility to formulate an operating plan for the premises. At the appropriate time, guidance should be issued to licenceholders, possibly in the form of a standard schedule prompting replies to set questions.

4. **Existing Licenceholders**

   The issue of “grandfather rights” arises in relation to the right of existing Licenceholders to be granted a Licence similar to what they hold at present. The South Ayrshire Licensing Board is anxious to ensure that there is no restriction on the discretion available to them to produce their Statement of Licensing Policies and to consider applications based upon the Objectives in the Bill and those Policies.

5. **Fees**

   It is appreciated that Fees are to be governed by Regulations. However, it is essential that there remains an adequate resource through fee income or otherwise to finance the running of the licensing system and the important new role of the Licensing Standards Officer. South Ayrshire Licensing Board highlights this issue and seeks assurances that it will be addressed.

6. **Transitional Arrangements**

   It is appreciated that Regulations will follow the Bill. However, a tremendous amount of work will be required between the passing of the Bill and its commencement. A reasonable period, say one year, is essential.

7. **Test Purchasing**

   Test purchasing of age-restricted products has been piloted and is to be extended. This should be extended to include alcohol and an appropriate addition to the Bill should be made to allow this under proper supervision/scrutiny.
8. **Irresponsible Promotions**

South Ayrshire Licensing Board has in place a Code of Best Practice for On-Sales Premises and a similar Code for Off-Sales Premises. In both Codes, the issue of irresponsible promotions is addressed. The provisions in the Bill on this matter should apply to both On-Sales and Off-Sales premises.

9. **Licenceholder’s Suitability**

The Bill concentrates on ‘convictions’ being reported to the Board in relation to suitability. This is seen as being too restrictive and fetters the discretion of the Board to look to irresponsible behaviour on the part of a Licenceholder concerning standards, conduct and good practice. Consideration should be given to retaining the ‘fit and proper person’ test.

10. **Objectors**

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.

South Ayrshire Licensing Board is grateful for the opportunity to comment and trusts that these comments will assist in consideration of the Bill.

Dan Russell
Clerk, South Ayrshire Licensing Board
15 April 2005

**SUBMISSION FROM THE SCOTCH WHISKY ASSOCIATION**

The Scotch Whisky Association (SWA) is the trade association representing the Scotch Whisky industry at home and abroad. We welcome the opportunity to provide written evidence on the Licensing (Scotland) Bill.

The industry is committed to working with all stakeholders to tackle alcohol misuse and promote responsible consumption. Scotch Whisky distillers, for example, support a range of initiatives to encourage responsible enjoyment of their brands, including unit labelling, use of responsibility messages, server training and alcohol education initiatives.

At an industry level, the SWA has adopted a Code of Practice setting out minimum standards for the responsible marketing and promotion of Scotch Whisky, and is also closely involved in the preparation of responsibility standards, encompassing both producers and retailers, at a UK level. We want to help change societal attitudes so that irresponsible alcohol consumption becomes as unacceptable as drink-driving.

Building on this work, we believe an appropriate, modern Scottish licensing system will play an important role in establishing an environment which encourages responsible attitudes to alcohol.

Rather than comment on the technical detail of licensing arrangements, we have restricted our submission to those aspects of the Bill which impact on industry efforts to promote responsible consumption or on its operations.

Before this, we would like to highlight one omission that is of importance to Scotch Whisky producers and which would, with its inclusion in the Bill, protect consumers from deception by illegal operators.

(i) **On-trade spirits substitution**

The SWA and its members take action around the world to protect Scotch Whisky against all forms of unfair competition. One example of the unfair practice encountered is 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. The cheaper spirit may not be whisky or it may be bootlegged.

The re-filled spirit is then sold to consumers as genuine product, raising a number of concerns:

- Consumers are deceived as to the brand they are buying.
- Consumers’ health may be put at risk, as the re-filled spirit may be smuggled and potentially dangerous.
- Government loses revenue as no duty may be paid on the substituted spirit. Instead, profits go to the illicit market, sometimes to organised crime.
- Company brand building efforts are weakened, with perceptions of product quality undermined.

It is possible to prosecute cases of on-trade spirits substitution in Scotland using the provisions of the Trade Descriptions Act 1968, the Food Safety Act 1990, and the Trade Marks Act 1994. Under these arrangements, however, 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. Despite being convicted, the licensee is unlikely to have a licence suspended or revoked, nor indeed have the offence taken into account when it comes to licence renewal.

The SWA believes that stricter penalties are necessary to ensure licensees face appropriately severe consequences if they substitute branded spirits. Possible licence suspension or revocation, as well as consideration of such an offence during the licence renewal process, would have a strong deterrent effect.

During the passage of the Licensing Act 2003 (England and Wales), we welcomed the inclusion of on-trade spirits substitution as a ‘relevant offence’. Under section 129 of the Act, a personal licence holder who commits a ‘relevant offence’ may have that licence suspended or forfeited. As a result, offences which may have a potential impact on a personal licence include:

- Re-filling branded bottles;
- Substituting an alternative for the brand requested at the time of order;
- Misleading descriptions of alcoholic drinks;
- Supplying low quality or low-strength spirits;
- Charging for a known brand while serving one other than that requested.

The Bill offers an opportunity to include similar provisions in Scottish legislation, protecting consumers, and assisting industry efforts to protect Scotch Whisky and other spirits. It would be most regrettable if a situation were to arise where Scotch Whisky received better protection south of the border compared to Scotland.

In the context of the above, we would ask that the Committee recommend the bringing forward of an amendment to the Bill introducing a ‘relevant offence’ for on-trade spirits substitution in Scotland.

(ii) The National Policy Framework

While local flexibility to deal with specific circumstances is important, in recent years a plethora of local provisions relating to the promotion of alcohol has caused uncertainty for businesses.

The SWA welcomes the adoption of a clear national framework which, whilst allowing local Licensing Board flexibility, sets out standard national licence conditions. To be effective, there is a need for consistency of interpretation and application of the law, in particular in relation to irresponsible promotions.
(iii) Irresponsible Promotions

Promotions pursued in a responsible manner are a legitimate part of commercial business. Irresponsible discounting and other promotions that serve to encourage harmful drinking patterns need to be tackled.

The SWA believes that the most effective approach is rigorous and consistent monitoring and enforcement. If a licensee fails to meet the required standards in relation to promotions, the relevant sanctions should be vigorously applied, including possible suspension or revocation of a licence.

Schedule 3 of the Bill sets out standard conditions in relation to irresponsible promotions. These appear to be workable and consistent measures which will assist in promoting responsible consumption, and we support their implementation.

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.

Care should be taken, however, not to impinge on those promotions run responsibly and which in no way encourage harmful drinking. We would welcome re-assurance, for example, that the rules would not, as an unintended consequence, hinder tastings of a new product range. We also believe that Schedule 3(8)(3)(c) could unnecessarily inhibit responsible promotional activity, e.g. preventing a modest price reduction for a double measure so that it is not twice the price of a single measure. The Nicholson report itself concluded there was no evidence that such modest promotions on price encouraged irresponsible consumption.

Moving forward, in tandem with the legislation, there is a great deal of existing best practice which can be drawn on. In addition to the SWA Code of Practice, many companies have marketing codes of conduct that require the promotion of their brands, either by in-house staff or through the companies to which they sell, to be undertaken in a responsible manner. Separately, at a UK level, trade associations are working with the government in the preparation of standards covering responsible practices in both the on and off trade. The industry is keen to work with all stakeholders to build on existing initiatives.

(iv) Overprovision

The SWA welcomes the proposed arrangements, whereby the Licensing Board will be able to determine what amounts to a ‘locality’ when assessing overprovision. Boards should be as flexible as possible to reflect the different pressures which may apply in different geographical areas, within their own districts.

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.

(v) Training

Scotch Whisky companies take a close interest in ensuring that licensed premises staff are knowledgeable about the products they serve and are aware of the need to encourage responsible behaviour. For example, several producers provide financial support to the Alcohol Focus Scotland server training programme, ServeWise.

We welcome the proposal that personal licence holders and permanent staff who are servers of alcohol should receive mandatory training at an agreed national level. However, the legislation should go further and we would encourage the Committee to consider what form
of training might be required of casual staff working in licensed premises. At the very least, casual staff should be formally trained in what licensing law requires of them in relation to the sale of alcohol.

(vi) **No-proof, no-sale approach**

The SWA and its members are supportive of any initiative that might assist efforts to prevent underage drinking. Several of our member companies, as well as the Association itself, are signatories of The Portman Group Code of Practice, and support its national proof of age card scheme as a means to help licensees uphold the law and to deter under 18s from trying to buy alcohol.

We welcome that all licensees will be required to operate on a ‘no proof no sale’ basis where there is any doubt that a young person is over 18. The onus must be on operators in both the on and off trade to control access to alcoholic beverages and create a culture of enforcement of the statutory minimum legal purchasing age.

(vii) **Off-trade**

While much of the Bill’s focus is directed towards the on-trade, the Scottish Executive has indicated further research is needed before extending the control of irresponsible promotions to off-sale premises.

We are disappointed that that the opportunity is not being taken at this stage to adopt a tough approach to both the on and off trade. In this context, we would like to see consistent application of the new licensing regime across both the on and off trade, particularly in areas such as ‘no proof, no sale’, staff training, and control of irresponsible promotions.

We hope you will find our submission of assistance. Needless to say, the SWA would be happy to provide clarification or further information on any aspect of its submission.

Campbell Evans
Director of Government & Consumer Affairs
20 April 2005

**SUBMISSION FROM WEST LOTHIAN DRUGS AND ALCOHOL CONCERN**

1. We welcome the proposal that licensing boards’ statements of policy should endorse the objectives set out in paragraph 4. Consultation on the licensing board statements should be, however, wider than the minimum indicated and should include e.g. health service, social work and Drug/Alcohol Action Teams.

2. Consultation on overprovision of licences should be wider than indicated in paragraph 7(4) and should link to the licensing objectives outlined in the Nicholson report.

3. Local authority areas containing large populations should be able to institute licensing divisions.

4. Local licensing forums should be able to comment on individual applications.

5. We are concerned regarding the authorisation of license holders to “use reasonable force” to remove persons from their premises in paragraph 86(4)(b).

6. We are concerned about the lack of specificity regarding identification documents in paragraph 93(4)(c).

7. We consider there is a possibility of abuse or misunderstanding arising from paragraph 97(3).

8. We consider there is the possibility of confusion regarding the meaning of paragraph 98(2).
9. In Section 8 we are concerned that there is a lack of objectivity regarding the term “drunk”. We feel that there is scope to further define the word “drunk” in terms of behaviour.

10. We consider the term “frivolous or vexatious” in paragraph 21(3) to be lacking in objectivity.

11. We consider there is a need for a more rigorous statement of the training requirements for licensing board members in Schedule 1 paragraph 11. There should be a register of training completed by licensing board members.

12. We consider the training requirements for licensees and staff in Schedule 3 should be more prescriptive. There should be a register of training completed by licensees and staff, which could be open to inspection by licensing standards officers.

13. We are concerned that in Schedule 2 there is no requirement for local licensing forums to link to providers of specialist alcohol services or Drug/Alcohol Action Teams.

14. There should be a duty on local licensing forums to produce an annual report.

15. We consider that 5 is too small a minimum number of members and 10 may be too small a maximum number of members to fully represent community interests on local licensing forums.

Mr. Bob Burnett
Secretary
West Lothian Drugs & Alcohol Concern

SUBMISSION FROM WEST LOTHIAN LICENSING BOARD

Part 1

Licensing objectives

West Lothian Licensing Board welcome the introduction of the licensing objectives as they set out broader purpose for licensing.

Part 2

Publishing Policies

The Board welcome the requirement to publish licensing policies which should ensure reasonable consistency of approach in processing applications.

In relation to the duty to assess over provision, the Board would welcome national guidance on the definition of over provision. However the Board would not wish this to be prescriptive and would stress the importance of local knowledge in determining such matters.

Part 3

Objections and Representations to Applications for a Premises Licence

While the Board welcome the changes in the procedure for objections which will make the licensing process more accessible for local people, the Board are of the view that further clarification of potential objectors is required, for example should objections only be permitted from persons living within the Licensing Board area.
Premises Licences

The changes to the licensing system will have serious cost implications for Licensing Boards as premises licences are now being granted indefinitely and the Board will lose the income currently generated every three years. The Board will also lose the income generated annually on regular extensions as permitted hours will be included in the Premises Licence. There will also be additional costs incurred by Licensing Boards with the employment of Liquor Licensing Standards Officers and additional training requirements for Board Members. The Board will still have considerable advertising costs, given that meetings will be held more frequently than at present. Although the Board support the principal of fees being self-financing, this cannot be achieved if fees are set centrally. The Board are of the view that fees should be set locally in order to self-finance and that the Board should have power to set fees for applications at levels to recover the cost of administering the system in a similar way to that operated under the Civic Government (Scotland) Act 1982. The setting of fees on a national basis means that for many Boards their costs will not be met which will result in the financial burden having to be met by local taxpayers.

Part 4

Occasional Licences

As there is provision for any person to object to an application for an Occasional Licence, there would require to be a mechanism for publicising such applications in order to bring them to the attention of potential objectors.

Part 5

Operating Plans

As the system of occasional extensions has not been included in the Bill, there is no mechanism whereby the holder of a premises licence could apply for additional operating hours for one-off functions such as weddings. It would be difficult to foresee all events that should be included in the operating plan. The only mechanism of achieving this would be to apply for a variation of the terms of the premises licence which would not be practical. It would therefore be beneficial if a system of occasional extensions could be retained for these purposes.

Part 6

Personal Licences

Assessment of a licenceholder’s suitability has moved away from the “fit and proper person” to one which seems to rely on convictions. The Board is concerned that this too restrictive and will exclude consideration of events which have not yet progressed to a conviction. It would also be necessary to clarify if for example a Fiscal’s fine is included in the term conviction. There is also concern that there is no provision for refusal on the grounds that the person on whose behalf premises are being run is unsuitable, as is contained in the current legislation. There may also be occasions when a Board would want to consider spent convictions and would welcome the opportunity of being able to do so.

The Board are also of the view that it would be necessary to have a National Database covering all personal licenceholders which would deal with recording of endorsements and suspensions of personal licences.

Part 7

Control of Order

West Lothian Licensing Board have no specific comments to make on the provisions for exclusion orders being granted in respect of persons convicted of violent offences in or in the vicinity of licensed premises and the provisions for closure orders to be made in respect of licensed premises by senior police officer or by the Board.
Part 8

Offences

West Lothian Licensing Board welcome the provisions regarding the no proof, no sale issue and the requirement to display notices to this effect.

Part 9

Miscellaneous

West Lothian Licensing Board welcome the definition of excluded premises which includes premises used primarily as a garage or which form part of premises which are primarily used as a garage. West Lothian Licensing Board are of the view that this will reinforce the anti drink-driving message.

22 April 2005

SUBMISSION FROM YOUNG SCOT

Introduction

Young Scot is very pleased to have the opportunity to comment on the Licensing (Scotland) Bill. As the national youth information agency for Scotland, and accredited partner to all 32 local authorities in Scotland in the production of localised PASS (Proof of Age Standard Scheme) youth cards, Young Scot feels that it is important that the Committee is made aware of the current situation surrounding the provision of voluntary proof of age cards in Scotland and the potential for additional applications and future development.

Background to Young Scot

Young Scot is the National Youth Information Agency for Scotland. Over the past 22 years its aim has been to provide young people aged 12 to 26 with a mixture of information, ideas and incentives to enable them to:

- Make informed decisions and choices.
- Turn their ideas into action.
- Take advantage of the opportunities available in Scotland and across the rest of Europe.
- Have the confidence and knowledge to become active citizens in their communities.

Young Scot applies the following principles in all its work related to young people:

- It treats young people as young adults, and as individuals.
- It values young people’s views and involves them in the development of its materials.
- It treats all young people equally, whether they are a student, young worker or unemployed – increasing social inclusion.
- It views young people in a holistic manner, bringing together agencies and organisations to provide services and information to young people.

To achieve these aims, Young Scot produces a broad range of information and card-related services. The most relevant of these in the current context is the Young Scot Card, which gives access to discounts and special deals in 1,800 places across Scotland and 200,000 places across 42 European countries. Currently approximately 300,000 young people carry these cards in Scotland, of which currently around 100,000 are accredited PASS proof of age cards.
Proof of Age Standards Scheme
The British Retail Consortium launched the Proof of Age Standards Scheme (PASS) in January 2003 with the support of the Home Office. The aim of the scheme is to set standards of verification for issuers of proof of age cards across the UK, and therefore give sellers of age restricted goods confidence to accept cards bearing the PASS hologram as valid proof of age cards.

A hologram was chosen for the PASS accreditation symbol, as these are extremely difficult to forge to produce counterfeit cards.

The PASS hologram features prominently in a retailer information / awareness package currently being produced by Young Scot to help local trading standards officers and police to inform sellers of age restricted goods about the new scheme, and to encourage them to recognise and accept the cards if offered as proof of age.

Young Scot is the accredited PASS card issuer for Scotland, which it does in conjunction with almost all Scottish local authorities through the Dialogue Youth initiative. It is expected that councils will be issuing co-branded local authority / Young Scot cards bearing the PASS hologram by December 2005. By the end of 2006, up to 320,000 young people aged 12 to 18 could be in possession of these proof of age cards. In addition, the Scottish Executive has committed to produce Young Scot / PASS cards for 18 to 26 year olds as part of its roll-out of the Concessionary Fares Schemes to young people.

As PASS is a nationally recognised scheme, retailers should accept Young Scot cards bearing the PASS hologram across the United Kingdom.

The co-branded Young Scot / local authority cards have proved very popular, with the average voluntary take up of the cards by young people running at approximately 80%.

Protection of Young People
We welcome the focus in the Bill on protection of young people. In particular we welcome the comments on this subject in the Executive’s policy memorandum and the fact that this has been reinforced, within the Bill itself, through the designation of protection of children as a licensing objective.

Role of Young People
We are pleased to note that the policy approach adopted recognises the role that should be played by young people in civil society. In this regard we particularly welcome the requirement to include young people on local licensing forums.

Training
There are numerous references in the Bill to training. These refer to members of licensing boards, premises managers and staff serving alcohol. We believe that any prescribed training must include dealing with under age sales in a sensitive manner and should include reference to appropriate documents for proving age.

We also suggest that the training needs to be extended to staff other than those specified in Schedule 3, Paragraph 6 (2) which essentially covers only those selling or serving alcohol. It is our view that this needs to be extended to those, such as door stewards, who are responsible for the security of premises and for the determination of whether any person is permitted to enter premises. Obviously, this latter group will play a key role in discouraging under age sales on licensed premises.

Selling Alcohol to Young People
Section 93 deals with selling alcohol to young people. It makes reference to documents, which are acceptable for proof of age, and in subsection 4 uses the phrase “Bearing to be”. We simply do not understand this phrase. We assume it means that the document purports or appears to be one of the documents listed. We believe this provides insufficient protection for children, as the seller could claim to have believed that a counterfeit, or inadequately controlled document was acceptable. We believe that in order to avail her/himself of this defence the seller should be required to have exercised due diligence to ensure that the document was genuine.
S 93 (4) (c) allows for other documents to be prescribed by Scottish Ministers for this purpose. We recommend that PASS approved cards and only PASS approved cards be prescribed for this purpose.

S 95 refers to the sale of liqueur confectionery. The defence in this section is much easier to establish. Whilst we accept that these products are less harmful than alcohol we believe the defence provisions should be the same as S 93 to ensure consistency.

S 101 requires the display of a notice on premises regarding age related sales. We suggest that it would be better if this notice specified the types of proof of age, which were acceptable. It may therefore be necessary to allow the actual wording of the notice to be specified in subordinate legislation, which could be linked to any regulations made under S 94 (4) (c).

**Test Purchasing by Young People**

We note that it remains an offence for young people to purchase alcohol. We suggest that it will be difficult to enforce section 93 without such test purchasing, but that, as currently construed S96 would make this a criminal offence. This conflicts with the policy aim of protection of young people. We further note the recent policy change by the Lord Advocate in relation to use of children for test purchase of other age related products. We suggest amending S96 by the addition of wording similar to that incorporated in S149 of the Licensing Act 2003.

This would allow a young person to take part in test purchasing at the request and under the supervision of a police constable or weights and measures inspector (the latter are often involved in enforcing the law relating to other age related products). We further suggest that this also include reference to Licensing Standards Officers.

**General**

We believe that the introduction of the Bill must be accompanied by a heavyweight (by commercial advertising standards) publicity and education campaign for relevant traders and young people.

We further believe that references to age restricted sales and PASS approved cards should be included in operating plans and training.

**SUBMISSION FROM YOUTHLINK SCOTLAND**

YouthLink Scotland is the national youth work organisation for Scotland. We support the development of accessible, high quality youth work services which promote the well-being and development of young people. We are a national voluntary organisation working with both statutory and voluntary bodies. YouthLink Scotland’s membership includes nearly 50 voluntary organisations and 32 local authorities. We welcome the opportunity to submit evidence to the Local Government and Transport Committee’s Stage 1 Consideration of the Licensing (Scotland) Bill (“the Bill”).

YouthLink Scotland’s evidence is based on our own, and that of our member organisations’, extensive experience of working with young people. YouthLink Scotland’s evidence focuses on a number of general issues around the need for liquor licensing reform, as well as raising certain key issues around the provisions of the Bill. YouthLink Scotland and our member organisations would be happy to provide the committee with further information upon request regarding any of the issues we have raised in our evidence.

The National Policy Framework

YouthLink Scotland notes from the Policy Memorandum that the Bill “seeks to establish a national policy framework within which local decision making by local authority Licensing Boards would take place”. We welcome the proposed development of a national policy framework, and the emphasis that this framework will take into account local needs. YouthLink Scotland considers that the statutory duty of Licensing Boards under Section 12 of the Bill to consult Local Licensing Forums on various licensing matters will be particularly important in this respect.
The proposed National Licensing Forum

YouthLink Scotland is aware of the Scottish Executive’s commitment to establish a National Licensing Forum to “oversee the new licensing system”, and to provide expert advice and guidance to Scottish Ministers and to Licensing Boards. YouthLink Scotland welcomes this commitment, but takes the view it is vital that young people, and those working on their behalf, must be represented on the proposed National Licensing Forum. This will help to promote consistency of approach, and to ensure that the forum’s work takes into account the needs and concerns of young people. In this respect, the proposed National Licensing Forum should draw upon the expertise of YouthLink Scotland member organisations such as, for example, Barnardos Scotland, Fairbirdge in Scotland, Fast Forward Positive Lifestyles and the Scottish Drugs Forum which have considerable experience of working with young people in local communities to prevent drug, alcohol and tobacco misuse.

The Licensing Objectives (s.4)

YouthLink Scotland welcomes the licensing objectives outlined in Section 4 of the Bill, which will underpin the licensing system. We believe that the inclusion of these objectives on the face of the Bill will provide useful clarity and guidance for local authority Licensing Boards on how to carry out their functions under the new legislation.

With regard to the inclusion of “(a) preventing crime and disorder” as one of the core licensing objectives, YouthLink Scotland believes it is important to emphasise the non-generational aspect of drink fuelled crime or disorder.

YouthLink Scotland notes that the licensing objectives also include: “(e) protecting children from harm”. This is particularly welcome given the findings of the recent WHO report Young people’s health in context. This report, based on a survey of 162,000 young people aged 11 to 15 in 35 countries, indicates that children in Britain drink alcohol more often, and more heavily, than young people in any other European Country and in North America. There is also the evidence from one of YouthLink Scotland’s member organisations, Barnardos Scotland, highlighting the sheer scale of the risks to young people’s health and welfare arising from familial alcohol misuse. In this respect, we note the Scottish Executive’s own statistics that between 80,000 and 100,000 children are affected by parental alcohol misuse.

Licensing Boards (ss.5-6)

YouthLink Scotland welcomes the requirement outlined in Section 6 that Licensing Boards must, in preparing a licensing policy statement or a supplementary licensing policy statement, consult the Local Licensing Forum for the Board’s area. We note from the Policy Memorandum it is intended that such statements will “provide a broad indication of how the Board intends to carry out its functions under the new system”. We believe that the requirement to consult the local licensing forums will help to maximise the effectiveness of such statements by ensuring that they fully take into account, and reflect, local conditions and circumstances.

Local Licensing Forums (s.10)

We further welcome the proposal to establish Local Licensing Forums, and to place these on a statutory footing. YouthLink Scotland notes from the Policy Memorandum accompanying the Bill that the membership of these forums will include young people. This was one of the recommendations which YouthLink Scotland made in our submission to the Scottish Executive’s consultation on the liquor licensing reform. In our response we noted the suggestion that “an attempt should be made to involve young people” in the work of the Local Licensing Forums. We took the view that the reference in the consultation document to ‘attempting’ to involve young people did not go far enough, and that involving young people should be an explicit requirement. This would be in keeping with the community planning provisions of the Local Government in Scotland Act 2003, which provides that local authorities and their community planning partners must consult and co-operate with young people in the community planning process through which they now must deliver services. Against this background, we welcome the explicit recognition in the Policy Memorandum that the Forums “should be representative of persons or descriptions of
persons who have an interest which is relevant to the Forum’s general functions”, and that this will include young people.

YouthLink Scotland also welcomes the emphasis in the Policy Memorandum that links should be established between the Local Licensing Forums and the Local Alcohol Action Teams. This will ensure that local conditions, action plans and strategies are taken into account in the decision making processes adopted by the Local Licensing Boards and Local Licensing Forums.

Licensing Standards Officers (ss.13 – 15)

YouthLink Scotland considers that further consideration should be given to training Licensing Standards Officers in youth work approaches, given that their duties and responsibilities are likely to take them into frequent contact with large groups of young people in licensed premises.

Premises Licences (s.16)

YouthLink Scotland welcomes the Scottish Executive’s commitment to create a simpler, modern licensing system through the Bill’s provisions. We believe that the introduction of a set of mandatory standard national licence conditions can contribute to this process by helping to promote consistency of practice across Scotland in granting licences.

YouthLink Scotland considers that these mandatory conditions could also play a significant role in helping to curb irresponsible drinks promotions. YouthLink Scotland shares the Scottish Executive’s concern about the adverse impact of irresponsible alcohol promotions on young people’s health, and welcome the recognition which the standard national licence conditions will give to this issue. We take the view that the enactment of the legislation, once it has gone through all of its stages in the Scottish Parliament and received Royal Assent, should be accompanied by the launch of a national publicity campaign aimed at young people which highlights the health risks of such promotions.

YouthLink Scotland welcomes the commitment in the Bill that children and young people should be protected from harm. We also recognise that licensed premises which are more child friendly could help to educate young people within a safe environment on the dangers of excessive consumption of alcohol, and to encourage a more responsible attitude to alcohol. In this respect, YouthLink Scotland welcomes the introduction of a compulsory “operating plan”, which we believe will provide clear guidance about the conditions on which specific licences are granted. In particular, we welcome the proposal that these plans will include a clear statement of the premises’ policy towards access for children. We further welcome the requirement that licensees offering an on-sales service “think actively and seriously about whether their premises are suitable for children by choosing whether to “opt in” to access by children”.

Sale of alcohol to a child or young person (ss.93 - 101)

YouthLink Scotland agrees with the principle of ‘no-proof no-sale’, and believes that this approach could, in conjunction with other factors such as national publicity campaigns, help to promote healthier lifestyles amongst young people. We take the view, however, that to progress this approach initiatives such as the Young Scot Card should be looked at as a possible model, rather than adopting something which is simply a proof of age scheme. Young Scot encourages young people to increase their access to services, to improve their spending power and to promote the use of leisure activities.

Furthermore, YouthLink Scotland is aware of concern amongst our member organisations over the practice of adults purchasing alcohol on behalf of young people under 18, particularly from off licences. Against this background, we take the view that action needs to be taken to address this issue, alongside a proof of age scheme, if alcohol abuse amongst young people, particularly socially excluded young people, is to be tackled effectively.
Premises Licences: Mandatory Conditions (sch.3)

YouthLink Scotland welcomes the recognition within Schedule 3 of the importance of ensuring that staff are fully trained. We believe this will help to improve the standard of service being delivered within licensed premises. YouthLink Scotland also considers that improved training could help licence holders and their staff to avoid committing offences under the Bill by raising awareness of their duties and responsibilities under the new legislation, particularly with regard to protecting children and young people and helping to curb under age drinking.

That said, YouthLink Scotland notes that the reference in the Policy Memorandum is to the training of “permanent staff”. We believe that this raises a number of concerns, given the leisure industry's reliance on casual staff. We hope that the Local Government and Transport Committee will be able to give this issue further consideration.

YouthLink Scotland
May 2005
ANNEXES TO JUSTICE 2 COMMITTEE’S REPORT TO THE LOCAL GOVERNMENT AND TRANSPORT COMMITTEE ON THE LICENSING (SCOTLAND) BILL

Annex A – Extracts from Minutes

Annex B – Oral Evidence and Associated Written Evidence

22 March (9th Meeting 2005 (Session 2))

Written Evidence

Note of informal evidence session with community police officers

Oral Evidence

Gordon Macdiarmid, Convener, Licensing Board, Glasgow City Council

Associated Written Evidence

Gordon Macdiarmid, Convener, Licensing Board, Glasgow City Council

Annex C – Other Written Evidence

Other Written Evidence

Law Society of Scotland

Licensing Boards

Scotch Whisky Association

Scottish Retail Consortium

List of unpublished evidence
Present:

Bill Butler (Deputy Convener)  Miss Annabel Goldie (Convener)
Maureen Macmillan  Stewart Maxwell
Jeremy Purvis

Apologies were received from Jackie Baillie and Colin Fox.

_Licensing (Scotland) Bill (in private):_ The Committee agreed its approach to the Bill.
JUSTICE 2 COMMITTEE

MINUTES

9th Meeting, 2005 (Session 2)

Tuesday 22 March 2005

Present:

Bill Butler (Deputy Convener)           Jackie Baillie
Colin Fox                              Miss Annabel Goldie (Convener)
Maureen Macmillan                      Stewart Maxwell
Jeremy Purvis                          Stewart Maxwell

Licensing (Scotland) Bill: The Committee took evidence from—

Councillor Gordon Macdiarmid JP, Convener, Glasgow Licensing Board
Present:

Bill Butler (Deputy Convener)  Colin Fox
Miss Annabel Goldie (Convener)  Maureen Macmillan
Stewart Maxwell  Jeremy Purvis

Apologies were received from Jackie Baillie.

**Licensing (Scotland) Bill (in private):** Annabel Goldie declared a relevant interest.

The Committee considered the written evidence received to date and agreed to await further evidence and to consider a draft report in private at a future meeting.
Present:
Jackie Baillie
Colin Fox
Maureen Macmillan
Jeremy Purvis

Bill Butler (Deputy Convener)
Miss Annabel Goldie (Convener)
Stewart Maxwell

Licensing (Scotland) Bill (in private): The Committee considered its draft report. The Committee agreed to consider a further draft in private at a future meeting.
Present:

Jackie Baillie  Bill Butler (Deputy Convener)
Colin Fox  Miss Annabel Goldie (Convener)
Maureen Macmillan  Stewart Maxwell
Jeremy Purvis

**Licensing (Scotland) Bill (in private):** The Committee considered a draft Stage 1 report. The report as amended was agreed to.
9th Meeting 2005 (Session 2), 22 March 2005, Written Evidence

Note of Informal Evidence session with Community Police Officers

Patrick Docherty, Community Police Officer, Strathclyde Police (Glasgow)
Michael Anderson, Community Police Officer, Northern Constabulary (Ullapool)
Paul Corner, Community Police Officer, Lothian and Borders Police (Livingston)

Officers were asked about their experience of dealing with alcohol related issues in their own areas: for example, the types of problems/issues dealt with and the scale of the problem of alcohol, crime and anti-social behaviour. Key points arising were:

- Generally the situation had improved over the years, with more professional staff being employed by premises, drinking in the streets becoming an offence, children’s discos being better run etc. However, there remain a number of issues (outlined below).

- In cities students are targeted by licensed establishments earlier in the week, (Monday or Tuesday nights for example) which means that mid week is the only quiet(er) time for police.

- Issues are caused by the sheer number of people in licensed premises all leaving at the same time (in Glasgow this could be 35,000 people at once). In poor weather people disperse more quickly but in fine weather will congregate outside pubs, at taxi ranks and by fast food outlets, causing nuisance in residential and mixed use areas and becoming involved in fights. This can be compounded by cheap drinks’ promotions which encourage excessive consumption.

- In some areas 60–70% of the workload is alcohol related. There are cultural issues in Scotland as the consumption of large volumes of alcohol can often be equated with a ‘good’ or ‘successful’ night out. This manifests itself in increased vandalism, domestic violence and drink driving.

- In rural areas drink driving can be a way of life. With police cover thinly stretched, efforts are concentrated on the busiest and largest areas, so other areas are left without cover.

- Generally licensees are responsible (the example was given of some rural pubs running mini bus services to prevent drink driving) but a minority were more concerned with profits or satisfying customer demand than complying with the law.

- There are particular issues in relation to young people (generally age 12 and above). Various trials have been held throughout the country to try to identify how underage drink is obtained. Alcohol related vandalism etc is a big problem – the introduction of plastic bottles would assist in reducing this issue.

Licensing Boards / Forums and Officers

Officers were asked about their
- experience of the current Licensing Boards
- experience of Local Licensing Forums
- views on the proposal to establish the new post of Licensing Standards Officer, and
- the likely effectiveness of the Bill’s provisions in these respects.

Key points were:
- Officers don’t often come into contact with licensing boards themselves. However, feedback from police representatives on them indicated that they were seen as being inflexible and in need of modernisation. The Bill’s proposals were therefore welcome.
Powers of the boards could be better used to bring licensees to task as, under the current system, there was a perception that serious action would not be taken except in extreme cases. Licensees did not appear to view losing their licence as a serious threat. The Bill was seen as a welcome improvement, but would only be as good as its enforcement. A robust approach would be needed to ensure maximum benefits.

It was also suggested that sanctions with a financial penalty, such as restricting opening hours, might be effective.

Licensing boards need to be more answerable to their communities. The process for objecting is currently too complex and too difficult for the community to get involved in. Considered that community councils performed a useful function in this regard and that this could be built upon.

Police officers currently have a liaison role in going into pubs, performing visits, liaising with staff etc. If real powers are attached to licensing standards officers then this role could work well and provide more information, leading to better enforcement.

Licences

Officers were asked their views on the proposal to replace the current system of seven licences with a simplified system of premises and personal licences. They were also asked about the possible impact of licensing boards taking a more flexible approach towards licensing hours if it is thought to be appropriate for their area.

The current system of licenses is too cumbersome, with little difference in how the types of licence are actually processed. In areas with numerous premises, and seasonal extensions, it is very difficult for the current licence conditions to be accurately enforced.

Longer opening hours could have significant operational impacts. Many rural areas are not policed 24 hours a day with some forces clocking off at 3am. In urban areas, staff shifts are based upon the busiest hours and extensions could present problems in complying with rules on working hours. In general terms it was felt that more flexible hours would make policing more difficult.

Officers were asked whether they felt current alcohol pricing policies and drinks promotions, eg happy hours, contributed to binge drinking, anti-social behaviour and alcohol-related crime.

Current pricing policies affect drinking behaviour, competition between premises and cheap drinks promotions lead people to drink more than they otherwise might. This is compounded if, due to poor staff training or supervision, people are served when drunk and police are then required to ensure individuals are kept safely until sober. Eliminating cheap drink promotions was generally seen a positive move.

Offences, powers and sanctions

Officers were asked for views on the sanctions and offences set out in the Bill and whether they would make it easier to tackle alcohol-related crime.

Officers generally welcomed provisions allowing people who had misbehaved to be banned from licensed premises. However this needed to be followed up when the offender was sober so that they understood their actions were unacceptable.

If people are charged they need to be dealt with appropriately by the courts and receive suitable punishment.

Off licenses and controlling sales – especially to underage drinkers – also present particular issues. It can be hard to tell the age of young people and hard to get concrete evidence of people buying on behalf of under-age drinkers.
• Most registered clubs are well run but officers might benefit from an automatic right of entry where clubs aren’t complying with rules.

• Officers would welcome a power for police officers to close bars in the event of serious disturbances rather than such powers being granted on application to the courts.

• Use of plastic bottles and glasses would be welcomed as it would reduce assaults, vandalism, etc. The Bill could usefully encourage this.
Scottish Parliament
Justice 2 Committee
Tuesday 22 March 2005

[THE CONVENER opened the meeting at 15:07]

Licensing (Scotland) Bill

The Convener (Miss Annabel Goldie): I welcome everyone to the ninth meeting of the Justice 2 Committee in 2005. Papers have been circulated to members and item 1 on the agenda is the Licensing (Scotland) Bill. We have a full committee with no apologies, which is welcome.

I formally welcome to the meeting Councillor Gordon Macdiarmid from Glasgow City Council; perhaps more important, he is the convener of the City of Glasgow licensing board. We are glad to have him with us this afternoon. I also welcome Stephen Herbert from the Scottish Parliament information centre.

The committee has a set of questions to work its way through.

Councillor Gordon Macdiarmid (City of Glasgow Licensing Board): I shall do my best to assist by answering them.

The Convener: If you will be patient with us, we will try to make progress. You have Mr Butler to blame for your presence here—his commendation was so long that the rest of us could not resist the opportunity. We are grateful to you for appearing before the committee because we realise that in your role as convener of the City of Glasgow licensing board you are responsible for one of the busiest licensing areas in Scotland.

The Licensing (Scotland) Bill proposes a range of significant changes to the operations and procedures of licensing boards. A key issue for us is to assess the perspective of onlookers on the workability of the proposals in the bill as they relate to boards and the effectiveness of the proposals in tackling alcohol-related crime and antisocial behaviour. There is a perception that licensing boards are unwieldy and inefficient. Do you share that view?

Councillor Macdiarmid: Glasgow licensing board has a reputation for being more accessible and approachable than many other boards. It tries to conduct its business with a degree of humour, particularly in relation to objectors. The majority of applications are dealt with by professional solicitors who represent applicants, whereas objectors are likely to find the process most trying. It is certainly our intention to deal with objectors in a manner that is fair, equitable and, if at all possible, humorous, and to put them at their ease. That approach would be borne out by the vast majority of objectors.

There is a certain inevitability that if one approaches 10 members of any elected body—that is the quorum in the case of the Glasgow licensing board—one is bound to feel a degree of trepidation. Part of the difficulty is that many objectors do not understand the structures or the restrictions that are placed on them by the Licensing (Scotland) Act 1976. The 1976 act does not include words such as “frivolous” or “vexatious”, which are used in the bill; under the act, we have a restricted set of criteria to define relevant objectors and relevant objections. For many members of the public, that is a difficult concept. They are simply not happy with the notion that there will be an off-licence—or whatever it may be—in their street and they do not understand the significance of the location of the proposed premises, measured as a certain number of metres, in relation to their premises.

For many members of the public, the process of appearing before the board is undoubtedly daunting, despite our best efforts.

The Convener: Do you consider the proposals in the bill to be an improvement?

Councillor Macdiarmid: Yes and no—that is perhaps an inevitable answer. One of our concerns is that the bill proposes that a licensing board should have 10 members and a quorum of three. That may well be satisfactory for many rural areas, but it is not satisfactory for a city the size of Glasgow. Traditionally, it has been argued that one of the strengths of the Glasgow board is that it comprises a cross-section of the population: the breadth of the city is represented, and therefore local knowledge can be brought to bear on all our decisions. It is hard to see how that could be sustained if there were a quorum of three. A panel with three members would be more approachable and less daunting as far as the public are concerned, but there would be difficulty with the expertise and breadth of experience that we would have around the table in addressing licensing applications throughout the city.

The Convener: What is your current quorum?

Councillor Macdiarmid: The quorum is 10 and there are 20 members.

The Convener: Would you like the bill to be modified on that point?

Councillor Macdiarmid: Yes. As I said at the Holyrood conference on licensing reform a few weeks ago, it is our contention that there should be a sliding scale of membership and quorum. A point that I made at the outset and, indeed, in representations to the Nicholson committee is that...
we should not be constrained by a one-size-fits-all model. There must be recognition that licensing is a local function and therefore that different models are appropriate in different local circumstances. That remains the Glasgow board’s view and we intend to make representations in that regard.

The Convener: Do you think that the proposals to help licensing boards to tackle antisocial behaviour and alcohol-related crime are an improvement?

Councillor Macdiarmid: We welcome many aspects of the bill. At the Holyrood conference, the minister, Tavish Scott, admitted that the notion of the continuity of pricing policy has been lifted more or less straight from the policy that the Glasgow board has employed for the past year. We felt strongly that we had to move on that issue for two principal reasons. First, we have the evidence of our own eyes. The Glasgow board goes out on night-time visits four times each year—before each of its quarterly meetings—on the 8 pm to 4 am shift, as it is affectionately known. We have seen plenty of evidence of people, particularly young women, being heavily under the influence of alcohol on the back of irresponsible promotions. We have seen them staggering round the various premises that have entertainment licences and clutching the multicoloured bottles—which are so easy to see—that they have bought up in large numbers over a short period of time. That has an impact on public health and safety. It also clearly involves an element of public disorder and violence, which Strathclyde police has reported to us.

15:15

In Glasgow, our relationship with the police force is excellent. The force provides us with statistical information every quarter. Part of the difficulty used to be that licensed premises were concerned about reporting anything that happened because they thought that they would get the blame for it. However, in the past year or 18 months, we have been able to persuade them that it is very much in their interest, as well as in that of the public, to report incidents as they happen and that incidents will not necessarily be held against them. We have been developing and improving our relationship with licensed premises, which means that we have what we regard as increasingly accurate statistical information from Strathclyde police. That, together with the evidence of our own eyes, led us to believe that there was a problem that needed tackling.

There are other on-going issues. We are in discussion with Strathclyde police on off-sales. The force and I would like test purchasing to be extended into the liquor-licensing sphere. That is something that the Executive must decide—it is not a matter for local licensing boards.

The Convener: That is all to do with enforcement, and there is something of a public perception that licensing boards do not address with sufficient robustness concerns that are expressed about the conduct of licensees. Do you agree with that perception?

Councillor Macdiarmid: No. The evidence from the operation of the City of Glasgow licensing board gives the lie to that perception. At the normal quarterly meetings, the police force brings information before the board through the chief constable’s objection or comment. Public concerns are voiced by individual objectors, and the board has consistently examined those. I have some statistical information on what has happened over the past 18 months to two years, if that is of interest to the committee.

The Convener: Could you leave that with the clerks, so that we can circulate it to committee members?

Councillor Macdiarmid: Certainly, but I will give you some figures for 2003 and 2004. We refused 13 off-sales licences in 2003 and one on-sale licence and five off-sales licences in 2004, on a combination of chief constable’s objections and community objections. Over the same period, there were seven hearings before the board under section 31 of the 1976 act at the chief constable’s request. Those hearings resulted in a variety of actions. In two cases, because we had already removed the regular extensions, the licensees were given warnings at the section 31 hearing rather than having further action taken against them. In the other cases, the licences were suspended for periods of between a month and a year—a year being the maximum suspension that we can impose.

As far as public perception is concerned, a much more significant problem is the fact that after objectors—whether they are members of the public or the police force—appear before the board and the board hands down a decision to suspend a licence, an application for appeal is inevitably lodged in the sheriff court and the premises trade on, pending the hearing of that appeal. In Glasgow, because the sheriff court is busy, it can take an inordinate period of time for the appeal to be heard. In such cases, the community—if community members have been the objectors—is left with the impression that justice has not been seen to be done because the premises trade on despite their objections and the board having upheld those objections and suspended the licence. That was one of the points that we made to the Nicholson review and we find it gratifying that, under the bill, there will be greater immediacy of punishment, more akin to that which
obtains under civic government legislation in other areas of licensing activity.

**The Convener:** I should have apologised for the delay in starting the meeting. We were held up prior to the start, so I am sorry that you were kept waiting.

**Maureen Macmillan (Highlands and Islands) (Lab):** I will ask about the bill’s objectives, which are: preventing crime and disorder; securing public safety; preventing public nuisance; protecting and improving public health; and protecting children from harm. Are those the correct principles that should be at the heart of the bill, or is there anything that Councillor Macdiarmid would like to add?

**Councillor Macdiarmid:** By and large, Glasgow licensing board supported the principles as outlined by Nicholson, which develop the thinking behind the existing four grounds for refusal under the 1976 act. My greatest personal concern was about the protection of children. As Bill Butler knows, I was a teacher for 25 years—we shared some professional experience. I have worked with young people in Renfrew, which is a nice little microcosm of most urban cities, so I have seen the good, the bad and the ugly, if I can put it that way, in relation to alcohol there.

I feel—I might as well say so, as you have given me the opportunity—that the Executive has missed the boat with regard to children as far as the bill is concerned. The opt-in or opt-out has been much discussed. We would have preferred an assumption in the licence that premises would meet the required standards to accommodate children and that all premises should be welcoming in that regard. Our reason for thinking that was that we currently attach all sorts of conditions to children’s certificates, which allows us to drive up the standard of premises.

Laying aside premises that provide adult entertainment—there is a given that those are not the sort of premises where one would seek to admit children—I believe that there was an opportunity to drive up standards and, at the same time, create a fundamental change in people’s attitude. That attitude was, “Dad is in the pub and we’re outside,” or “Mum is in the pub”—let us not be sexist—and we’re outside.” We could have made more premises child friendly. I have an eight-year-old son, and one of the things that we welcome when we journey abroad is the fact that families are automatically admitted to premises and the standard is welcoming to families. That demystifies alcohol, and I hope that my eight-year-old is being brought up with a responsible attitude to alcohol. Fundamentally, it does not matter what legislation we have; unless we can change attitudes, we will not change the core problem in Scotland, which is the cultural tradition of being a hard-drinking nation.

**Maureen Macmillan:** Do you think that, if children are allowed into pubs and if pubs are child friendly, that will have an effect on the regular customers?

**Councillor Macdiarmid:** An onus should be placed on operators and licence holders to have premises that are child friendly. That creates a specific atmosphere and ambience, and I believe that that is desirable in all premises. The assumption should have been that that is the requirement, and licensees should have to opt out of that, particularly in the case of adult entertainment premises. In its proposals in the bill, the Executive has gone for the reverse situation, which 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 in the operating plan that we would naturally look for if children were to be on the premises.

**Maureen Macmillan:** That is an interesting point that we will no doubt pursue as we go along.

Do you think that the bill’s provisions—leaving aside what you have said about children—are sufficient to tackle the problems of binge drinking, which often leads to alcohol-related crime?

**Councillor Macdiarmid:** I have already said that the Executive’s proposals on the continuity of pricing followed the Glasgow model, and although the Executive has gone for 48 hours rather than 24 hours, I do not think that that makes much of a difference at all. On the remaining area that concerns us, we have no superior wisdom when it comes to tackling the off-licence problem. Test purchasing is one solution, or one part of the solution.

We are in discussions with Strathclyde police on taking an experimental approach within the east end of the city of Glasgow. Strathclyde police have come to us with maps that show that incidents of public nuisance and disorder can be plotted and that they occur around certain licensed premises. Their approach is to ask, “If we can demonstrate clearly to the board that we can attribute those elements of public nuisance and public disorder to those licensed premises, is the board prepared to act on them?” That has always been a difficult and vexatious issue, but it is one that we intend to move on.

I have no answers when it comes to the large discounts that supermarkets offer on liquor sales. I have heard suggestions that the placing of liquor at the immediate entrance to the supermarket for display purposes should be banned. However, people who seek to purchase alcohol at a discounted price will find it, whether it is at the
front of the store, the back of the store or anywhere else.

We have not come up with any clever ideas about how to handle liquor sales through the supermarket tills. However, we can address the issue of off-licences by using test purchasing and working with the police on public nuisance and public disorder. There is a third string, as it were, to that bow. One of our concerns has consistently been that people get wrong impressions about where alcohol has been purchased from. I will give an example from my own ward. As a throwback to the old veto poll situation, I represent an area that has a population of nearly 6,000 people but one off-licence. We are about to undergo a massive regeneration, as part of which the single row of shops in the Penilee scheme, where the off-licence is located, will be replaced. When we displayed the regeneration proposal, a number of the more elderly members of the community said, “Great, councillor. Does this mean that we can get rid of the off-licence, because there are youngsters in the scheme who drink and cause all sorts of antisocial behaviour problems?” I told them that the proposal would give them that opportunity, but that they were wrong, as the drink did not come from that off-licence, which operates very well. The manageress’s car has been damaged because she consistently applied a policy of repelling both the youngsters and those who were trying to be agents for them. I told people that the drink came from an immediately adjacent ward and that the police were on top of the issue and were dealing with it.

We must be careful about public perception. It is too easy to say that if youngsters have drink it must come from the nearest off-licence. In Penilee, drink also came from a flat, where supplies were brought in from the continent and sold from the flat, rather than from the off-licence, which in the public perception was the root of all evil. An education exercise must be conducted to get it through to people that not all off-licences are de facto sources of annoyance for the community.

I presume, convener, that members will come on to over-provision, but I am not sure whether it—

The Convener: We have a raft of questions and we should perhaps let members work their way through them as that will enable you to comment on some of the areas that concern you.

Councillor Macdiarmid: I shall stop at that point and deal with the other points later.

Mr Stewart Maxwell (West of Scotland) (SNP): You commented on test purchasing, in which I am interested. I have been in correspondence with the Lord Advocate on test purchasing in a range of areas. You will be aware that he has now come out with views on test purchasing of certain products that have an age limit, such as tobacco, but not alcohol. I wrote to him about that, and he said that under the 1976 act it is effectively an offence to buy or sell alcohol in such circumstances, so he could not use test purchasing. The phraseology is repeated in the bill. Should we amend the bill to allow test purchasing?

Councillor Macdiarmid: The important issue is the outcome. We should use whatever methods we can to deliver a more effective control to stop youngsters getting access to alcohol. That is what I would like to be achieved. If the legislation is to be successful in terms of public perception, it has to be framed in such a way that it reflects what people want. By and large, people have no qualms about the accessibility of alcohol to people who are over 18, but they want to stop access to it for those who are under 18. If test purchasing is a way to achieve that, I would go down that road.

The Convener: Quite a few of the questions will be susceptible to a yes or no answer. Please feel free to respond in such a way, because there is a lot of ground to cover and it would be good if we could get through it.

Colin Fox (Lothians) (SSP): I turn Councillor Macdiarmid’s attention to sections 10 to 12, which cover the local licensing forums. The bill proposes that each local authority should establish such a forum to review the bill and the operation of the licensing board. Do you have any experience of such forums? Do they currently exist in Glasgow? If so, what is your opinion of the way in which they function?

15:30

Councillor Macdiarmid: The forum that currently exists in Glasgow—we were ahead of the game—is 36-strong. It represents a huge range of public interests and has two directly elected members of the public—we allowed community councils to nominate, and the members were elected from the names that the community councils put forward. The forum works very well. I chair it, which would not be allowed under the bill’s proposals.

So much of what has been achieved in Glasgow has been achieved on a collegiate basis. Before the forum was set up, we had a nightclub forum, at which we met entertainment operators and others. Over the years—my predecessors have to take a lot of credit for this—we have had a strong body of interaction that works well. The remit is huge. At present, one of the big issues in Glasgow is clearing the city centre. We are examining whether that is achievable using taxis, private hires and buses, or whether we have to move beyond that to taxibuses, for example. All the interest groups,
such as the health board, are represented. The forum is a significant body.

My major concern is that the forum would be restricted to 10 members under the bill. That goes back to my initial comments about a one-size-fits-all approach. It is not appropriate in a city the size of Glasgow to restrict the forum to 10 members. I seek greater flexibility.

Colin Fox: The bill states that the forums would meet at least once a year. How often does yours meet?

Councillor Macdiarmid: At present, it meets quarterly.

Colin Fox: As far as you are concerned, it is a marked success.

Councillor Macdiarmid: That is my view, and it is the view that is being voiced by everyone. We do not take an exclusive approach; we have an inclusive approach. People have said to us, “We’re operating in this field. Can we come on to the local licensing forum?” and the answer is invariably yes.

Colin Fox: You said that there are 36 members of the forum. Five types of people are referred to in paragraph 5 of schedule 2, including the chief constable, licence holders and young people. Can you give me an idea of where the 36 members of your forum come from? You said that two community representatives are directly elected. Where do the rest come from?

Councillor Macdiarmid: They come from a wide range of interest groups. The forum is not an organ of the council—it stands independently—but the chair and vice-chair of the licensing committee are members. We work together on licensing issues. There are representatives from the health board, taxi firms, private hire firms and Strathclyde Passenger Transport Executive. The health board representatives include an accident and emergency consultant. We also have representatives from Alcohol Focus Scotland and other alcohol interest groups and from colleges, training groups and so on.

Part of the reason for my view that we should go wider than the bill proposes is that many people have an interest in the area, and there is a desire not to replicate work that is being done by others. One issue that has come out of the forum is that people have recognised that they are doing the same work and have suggested that they work together, saving resources by working in a collegiate manner, rather than a number of people working in isolation.

The Convener: Is the bill’s formula too restrictive?

Councillor Macdiarmid: A wider cross-section of people have an interest in the area than is mentioned in the bill.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I have a question on the proposed reform of the types of licences, from seven down to effectively two. Do you have a comment on the existing system? What impact will the reforms have?

Councillor Macdiarmid: The existing system has certain historical anomalies and difficulties. Having a simplified system would be an improvement. However, my concern in that regard relates to the issue of over-provision. We need to compare apples with apples and eggs with eggs. If you designate somewhere as an area of over-provision, you are saying that all the licences for that area have gone. People will not be happy if that means that a new Sainsbury’s will not open in the area because the company is unable to get a licensed part in its supermarket. What people are concerned about is the corner shop that seeks a licence.

I foresee difficulties for licensing boards in terms of how they use the new system to make assessments. However, the situation will certainly be a lot better than it is at the moment. At present, people are unsure whether they should be applying for a refreshment licence, a restaurant licence, a public house licence or whatever, and if those poor souls do not get the answer right, they will fall foul of the system. Often, those people are the ones who are keen to operate appropriately within the law. The people who most often fall into that trap are those who seek to save themselves money by not using a specialist licensing solicitor.

Having two categories will be infinitely preferable. The concern that we have about the personal licence is that there has to be a national register to prevent people from transporting their licence from one area of the country to another. 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. That is the general view of everyone to whom I have spoken about this matter, from people on licensing boards to the lawyers who are involved in this area.

Bill Butler (Glasgow Anniesland) (Lab): You are aware of the range of national conditions that will apply to premises licences and personal licences and the proposal to create a national licensing forum. Does the bill allow sufficient flexibility for licensing boards to take account of local conditions? Will the prescribed national conditions hinder licensing boards in operating as local decision-making bodies?
Councillor Macdiarmid: The basic plea that I have made from the beginning of the process is this: do not box us in. The people who are best able to assess the licensing situation in the locale are the people on the local licensing board. There are certain areas in which it is absolutely appropriate to have national conditions—

Bill Butler: What areas?

Councillor Macdiarmid: For speed, I will give you only one example. We would certainly welcome national conditions being imposed in the area of adult entertainment. In Glasgow, there has been controversy in that regard. We now have a draft scheme of conditions that we hope will largely accord with that which will come down nationally.

In other matters, however, the local knowledge that licensing boards have is invaluable and there has to be flexibility and trust in the system. The bill, as a whole, trusts licensing boards but there are one or two areas in which I would like there to be greater flexibility.

Bill Butler: What are the salient demerits of what you would construe as being an inflexible national approach?

Councillor Macdiarmid: The definitions of over-provision should not be subject to a national approach. Glasgow’s licensing board has consistently been of the view that, given the number of people who are out enjoying themselves in the city centre of a Friday or Saturday evening, there is no over-provision in that area. It would be absolutely impossible to define an area in which one more licensed premises would be one licensed premises too many, or one less would be too few.

Our concern is with standards. If there are 100 premises that are all of a good standard, are all well managed and all operate within the rules and conditions, you do not have a problem. Conversely, if you have five premises, three of which do not meet those criteria, you have a problem.

I am a bit concerned that we might get a national approach that is different from that which is taken in mixed-use areas. That is the core of the conflict. Obviously, the council defined the merchant city in planning terms as mixed use, whereas the residents and the community council argue that it is residential. That is the core of the conflict. Obviously, the approach that is taken in mixed-use areas is different from that which is taken in areas that are essentially residential.

At present, planning and licensing are totally separate and there is no proposal to change that. We often find ourselves in the situation of having a solicitor appear before us who says, “Your honours, my client has gone through all the appropriate processes and has the planning certificates in place. There is nothing in the city plan to say that the proposed use is inappropriate for this area.” However, the local community will still object because it feels that enough entertainment licences have already been granted.
in the merchant city, which they argue is a residential area. We need the wisdom of Solomon.

**Bill Butler:** Are such cases a regular occurrence only in that discrete section of the city centre?

**Councillor Macdiarmid:** Yes, they happen regularly only in that part.

**The Convener:** We move to our next question. I ask members to keep their questions focused.

**Mr Maxwell:** You may have touched on this issue already, but will you clarify the extent to which you think that alcohol pricing policies, such as drink promotions and happy hours, contribute to the binge-drinking problem that we hear about and the consequent antisocial behaviour?

15:45

**Councillor Macdiarmid:** We have consistently taken the view that that is a major issue. For years, we sought, but were denied, byelaw powers from the Executive and its predecessor the Scottish Office to tackle binge drinking. When I became chair of the licensing board some two years ago, I immediately entered into discussions with our then clerk, with a view to constructing a policy that was designed specifically to tackle binge drinking and happy-hour promotions. The advice that I got, which has subsequently been proved to be correct, was that price fixing was ultra vires. That explains our choice of policy, which has been highly effective in sweeping away such promotions in Glasgow.

We went out on our March quarterly visits just three weeks ago. We do not see the same numbers of youngsters staggering around with multicoloured bottles that we saw before. In fairness, we have had a lot of support from the drinks industry. Its members’ cry was that they wanted a level playing field. They said that although they did not want to deep-discount, they had to do it because Fred Smith up the road did it. To a large extent, the industry came with us on our binge-drinking policy. We have linked that with other initiatives, such as that which is aimed at getting glass out of city centre premises; only plastic, aluminium and toughened glass are allowed.

**Mr Maxwell:** In a nutshell, your view is that pricing policy has a direct effect on the binge-drinking problem.

**Councillor Macdiarmid:** Absolutely.

**Mr Maxwell:** Do you think that the new system of licences will be more effective than the current system is in tackling alcohol-related crime and antisocial behaviour?

**Councillor Macdiarmid:** My experience is entirely limited to Glasgow. What is proposed nationally mirrors what happens there. We recently visited 30 premises from Ashton Lane in the west through to Dennistoun in the east, some of which were in the city centre. The most unsatisfactory thing that we found that evening was a lack of toilet paper in one ladies’ loo. That represents a huge improvement.

At the end of the night, when we were saying that things were a lot better, one of my colleagues suggested that that was perhaps because we had got much better at dealing with the situation by bringing in policies that were designed to eradicate binge drinking and happy hours and by changing the environment, not just on the licensed premises. Earlier, I spoke about working with our colleagues on the licensing committee, who have brought in prohibitions and terms relating to—[Interuption.] Everything is moving in the right direction.

**The Convener:** Yes, but Stewart Maxwell asked whether the new system of licences would be more effective. You seem to be saying that the existing system, if it is well managed, works fine.

**Councillor Macdiarmid:** No. I am saying that we found ways of improving on the existing system. What is proposed would take that further.

**The Convener:** That is fine.

**Jackie Baillie (Dumbarton) (Lab):** I have a quick question about part 7, which is on control of order. Do you think that the proposed measures—exclusion orders and closure orders—are sufficient? Are they better than what we have at the moment? Would you amend them or add to them in any way?

**Councillor Macdiarmid:** The short answer is that I think they are an improvement. For me, the key element is immediacy.

**Jackie Baillie:** Thank you.

**The Convener:** Part 8 deals with offences that relate mainly to young people. It contains quite a list of offences. The committee was a little unclear about whether those offences differ from the current offences.

**Councillor Macdiarmid:** Yes, they do. That brings us back to the key area of how we change the culture. I can well understand the thinking behind a number of measures in the bill, but the key element remains how we encourage young people to adopt good social drinking behaviour in a family context. I am not sure that statutory measures will achieve that, unless we ensure that premises are children friendly and that it becomes the social norm for children to learn about drinking in those premises in a family context. That is more
important than the specific measures that you are talking about.

The Convener: Do you think that some of the new offences will support the development of the culture that you favour?

Councillor Macdiarmid: I think that they will, but my concern is that the bill stops short of moving on what I regard to be the most essential element. It should be a requirement that 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. That is the key, and it will happen not in a generation, but in a number of generations. However, we must make a start.

Colin Fox: What are the resource implications of the bill for your licensing board?

Councillor Macdiarmid: So far, it has been said that the bill must be self-funding and self-financing. However, the work for the board and its officers will increase significantly. For example, at present we have one liquor licensing standards officer, but we will probably need four or six.

Colin Fox: Do you have one officer for the whole of Glasgow?

Councillor Macdiarmid: Yes, but we will need four or six. The clear implication is that we will be able to deal with the bill only by addressing it properly in staff and other resource terms and by passing on the charge to licence holders in licence fees. That is the answer that I have given to members of the trade. There will be a major increase in our workload, which will have significant financial implications.

Colin Fox: You said that what is proposed nationally is a mirror image of the current picture in Glasgow.

Councillor Macdiarmid: Only in the area of continuity of pricing.

Maureen Macmillan: We have covered the ground fairly well. Is there anything that you want to add before we end the session?

Councillor Macdiarmid: Not really. This has been a good discussion, and I am grateful for the opportunity to give evidence to the committee. From the beginning, my plea in this exercise has been for the Parliament to give us a licensing system that will stand the test of time and be accepted by the people, rather than something to which their response will be, “They would say that, wouldn’t they?” The arguments have been well made, but my overriding concern is about everyone being pushed into one set of parameters. I do not think that the system can operate in that way. There must be flexibility across a nation such as Scotland, which is disparate in community types. We must allow local licensing boards the trust that the bill clearly demonstrates to do what is appropriate in their local circumstances.

The Convener: I thank you on behalf of the committee for your forbearance. We have all found it immensely helpful to hear from someone who represents an area with such a significant presence of licensed premises of such a diverse nature. Your experiences have assisted us greatly. We are grateful to you for making time to appear before us this afternoon.

I declare a break of five minutes before we proceed to the next item.

15:52

Meeting suspended.
SUPPLEMENTARY SUBMISSION FROM LICENSING BOARD, GLASGOW CITY COUNCIL

Please find enclosed the relevant information requested by the Chair of the Committee at the Witness Session I attended on Tuesday, 22 March 2005. I trust the Committee will find this information useful.

You may recall that I was asked at the end of the Session if there were any other matters I wished to raise with them, inevitably I have subsequently thought of two.

Firstly, the proposed Bill makes no provision for occasional extensions, the suggestion being that this would require a new application. I would suggest that this is cumbersome and would involve a great deal of unnecessary expenditure. Occasional extensions under the 1976 Act are essentially very easy to deal with.

Secondly, I would stress how valuable we see the operational plan provision being particularly with regard to the control of off sales premises as discussed with the Committee. The best example would be an off sales operating in a row of shops in a housing scheme where all other premises close at 6.00 pm and the off sales thus becomes a magnet for antisocial behaviour. Rather than, as under the present legislation, either granting permitted hours or refusing the application, the Board would be in the position through the operational plan to require premises to close at 6.00 pm with their neighbours.

This is but one example. However, I would stress that the operational plan is perhaps the single most significant tool available to Boards in the proposed new legislation.

I am grateful to the Committee for their time and would be happy to provide any further information should they so request.

Councillor Gordon Macdiarmid
Chair
Glasgow Licensing Board
SUBMISSION FROM LAW SOCIETY OF SCOTLAND

The Licensing Law Sub-Committee of the Law Society of Scotland (the Sub-Committee) welcomes this opportunity to provide written evidence to the Justice 2 Committee.

It is the view of the Sub-Committee that the existing legislation requires to be updated, clarified and simplified. The Sub-Committee is therefore pleased to see that the lengthy and comprehensive consultation process has ensured that this Bill represents an important step in achieving these goals. In particular, the Sub-Committee is delighted to see that the licensing objectives are stated clearly in Section 4.

The Licensing Law Sub-Committee, along with the Criminal Law Committee, have considered the Bill and in relation to the licensing objectives of preventing crime and disorder and securing public safety and would like to make the following points:

**Section 7 – Duty to Assess Overprovision**
This section provides that a Licensing Board must include a statement as to the extent to which it considers there to be overprovision of licensed premises or licensed premises of a particular description in any locality within the Board’s area. The Sub-Committee believes that the lack of a definition of “locality” is problematic.

The Sub-Committee would seek clarification with regards to the relationship between section 4 and section 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 by the Scottish Executive in section 7?

If the duty to assess overprovision is deemed necessary, it is important that any assessment is made accurately. There may therefore be some merit in adopting transitional provisions for the existing licences in a Board area before this new Act comes into force.

**Section 9 – Licensing Board’s duty to keep a Public Register**
This section requires each Licensing Board to keep a public register containing information relating to premises licenses, personal licenses, occasional licences and decisions relating to applications made to the Board under the Act etc. The Sub-Committee feels strongly that this is an ideal (and possibly only) opportunity to introduce a simple, central, national and easily accessible computer register of designated personal licence holder. Such a system could also hold information pertaining to the training records and any other such information as may be deemed to be useful.

It is the Sub-Committee’s view that this will greatly assist administration by substantially reducing the bureaucratic burden on Boards and should be a mandatory requirement in the Bill. It will also have an important role to play in fulfilling the objectives of preventing crime and disorder and securing public safety and, indeed, the remaining licensing objectives.

**Section 13 – Licensing Standards Officers**
This section introduces the concept of the Licensing Standards Officers (LSOs). The Sub-Committee is of the view that the LSOs exist for the wider public interest and therefore should be funded by the Scottish Executive even if an equitable part of the cost is recovered from fees. The Sub-Committee suggests that the 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. By being able to carry out their role efficiently LSOs will be crucial to the achievement of the licensing objectives.

**Section 122 – Appeals**
The Sub-Committee is concerned about the immediate imposition of sanctions. It is the view of the Sub-Committee that the use of summary application procedure for cases in which a sanction is already in place may lead to unacceptable delays; and, in cases where the sanction is of limited
duration (for example, a short-term trimming of operating hours or closure for up to fourteen days), will render the right of appeal ineffective. The process can be further delayed if the decision of the Sheriff or Sheriff Principal is appealed to the Court of Session. In the most recent licensing appeal reported in the Scottish Courts website (*Smith v. North Lanarkshire Licensing Board* [2005] CSIH 22), the court gave a determination in relation to a decision taken by the Licensing Board on 1st November 2002. The decision was quashed. In that case, the license holder had been able to trade until the appeal was finally determined but it is easy to see the difficulties which would have ensued had the position been otherwise. The Sub-Committee favours the solution proposed by the Nicholson Committee. This envisaged an early interim hearing before a Sheriff restricted to the single issue of whether the sanction should be placed in abeyance pending a Sheriff Principal’s determination of the appeal on its merits (recommendation 42). It is also worth noting that the Working Group on Off-sales in the Community (the Daniels Committee) proposed an interim hearing before the sanction took immediate effect (Recommendation 29).

**Section 128 – Inspection of Premises before Grant of Licence etc.**

The provision in subsection (4) whereby a person exercising the power conferred by subsection (2) may if necessary use reasonable force is, in the view of the Sub-Committee, unnecessary. If premises are not inspected before the grant of a licence then the licence should not be granted. This would obviate the requirement to use reasonable force to gain entry.

**Section 129 - Police Powers of Entry**

This section deals with a constable’s right to enter and inspect any licensed premises in certain circumstances. Section 129(4) states that the constable can only exercise the right given in section 129(2) if he or she has obtained written authority from a justice of peace or a constable of or above the rank of inspector. Given that the power can be exercised within a period of 8 days beginning on the date on which the authority is obtained, there would appear to be no sense of urgency attached to such powers and the Sub-Committee would question why the constable should not rather apply to the sheriff.

I hope the foregoing is of assistance. The Sub-Committee is preparing further written evidence on the bill, which will be submitted to the Local Government and Transport Committee in due course. If you require any further information, please do not hesitate to contact me.

**LICENSING BOARDS**

Note:

At its meeting on 8 March, in the course of its consideration of the Licensing (Scotland) Bill, the Justice 2 Committee agreed to seek statistical evidence on liquor licensing from Licensing Boards across Scotland. The following information was requested from each Licensing Board, if it was available:

- The number of liquor licenses in force in each of the last five years;
- The number of complaints to Licensing Boards regarding licensed premises in each of the last five years;
- The number of suspensions of licenses resulting from these complaints in each of the last five years;
- The number of warnings issued to license holders as a result of these complaints in each of the last five years;
- The number of appeals in each of the last five years; and
- The number of those appeals that were successful in each of the last five years.

**SUBMISSION FROM ABERDEEN CITY LICENSING BOARD**

I refer to your letter of 21 March 2005 and provide the following statistics for Aberdeen City Licensing Board:

Total number of liquor licenses in force:
Total number of complaints seeking suspension of license in terms of s.31 of the 1976 Act:

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Total number of suspensions resulting from these complaints:

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<td>Unknown</td>
<td>1</td>
<td>1</td>
<td>2*</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

*Suspension under S.32 of the 1976 Act

Total number of appeals (in relation to suspensions):

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unknown</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Total number of successful appeals:

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unknown</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

SUBMISSION FROM LICENSING BOARD, ABERDEENSHIRE COUNCIL

In response to your letter of 21st March 2005 please see the statistics requested as noted below.

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of licenses in force</td>
<td>206</td>
<td>210</td>
<td>204</td>
<td>205</td>
<td>201</td>
</tr>
<tr>
<td>Complaints</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Suspension</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Warnings</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Appeals</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Successful appeals</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

SUBMISSION FROM ANGUS LICENSING BOARD

I refer to the above and thank you for your letter dated 21 March 2005.

The statistics requested by you are as follows:
<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total number of licences in force</strong></td>
<td>371</td>
<td>382</td>
<td>375</td>
<td>412</td>
<td>409</td>
</tr>
<tr>
<td><strong>Total number of complaints received</strong></td>
<td>8</td>
<td>13</td>
<td>4</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td><strong>Number of suspensions</strong></td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>Number of warnings issued</strong></td>
<td>Angus Licensing Board does not issue formal warnings although licensees are often cautioned regarding their future conduct when they appear at a Section 31 hearing when no suspension is imposed. No statistics are available on this point.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of appeals marked</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td><strong>Number of successful appeals</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

In relation to your question regarding the current regime and the proposals in the Bill, I feel unable to comment in detail until such time as some of the regulations etc are drawn up.

The Bill itself does not give much information regarding duties incumbent upon the local authority and there are concerns that the system could become too bureaucratic or that local authorities may face a number of appeals through minor errors regarding provision of information e.g. the intimation process relating to applications seems somewhat onerous regarding local authorities having to identify all properties in a 50 metre radius.

The current regime gives Licensing Boards very little power to deal with problems and suspension hearings are often seen as a last resort. The Bill appears to address this.

Finally, there is significant concern that the “irresponsible promotions” provision does not included off-sales type premises.

**SUBMISSION FROM ARGYLL & BUTE LICENSING BOARDS**

I refer to your letter 21 March 2005 which superseded your earlier letter of 11 March 2005 and note the request contained therein. I would respond as follows:-

a) Total licenses in force in the last five years – this information is not readily available for the period requested. However, I would refer you to the Scottish Executive Annual Publication in relation to liquor licensing which contains not only this but other information which the Committee may find useful

b) Complaints – no register is kept therefore to obtain this information, checks on all licensing board files would be required. It is unclear from your request as to the type of complaint you are referring i.e. general complaint from a member of the public or complaint made by a statutory complainer in terms of section 31, 32 etc

c) Suspensions – none

d) Warnings – three in the last two months which related to complaints lodged by Strathclyde Police. Warnings given at the formal hearings called by the Board to consider the terms of the complaint

e) Appeals – see a) and b) above

f) Successful appeals – see a) and b) above

The Licensing Boards general view relates to the frustration felt by them as to the lack of any real power to address in acceptable licensed premised or indeed licensees. The present processes are complicated, lengthy and rarely achieve the result Board’s desire.
## SUBMISSION FROM CLACKMANNANSHIRE LICENSING BOARD

<table>
<thead>
<tr>
<th>Licence Type</th>
<th>Year 2000</th>
<th>Year 2001</th>
<th>Year 2002</th>
<th>Year 2003</th>
<th>Year 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant New License</td>
<td>6</td>
<td>5</td>
<td>6</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Renewal of License</td>
<td>38</td>
<td>38</td>
<td>38</td>
<td>45</td>
<td>36</td>
</tr>
<tr>
<td>Consent to Alter</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Grant of Regular Extension</td>
<td>85</td>
<td>82</td>
<td>84</td>
<td>88</td>
<td>90</td>
</tr>
<tr>
<td>Children’s Certificate</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Permanent Transfer</td>
<td>1</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Confirmation of Transfer</td>
<td>12</td>
<td>11</td>
<td>10</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Permanent after Temporary Transfer</td>
<td>12</td>
<td>22</td>
<td>17</td>
<td>9</td>
<td>20</td>
</tr>
<tr>
<td>Temporary Transfer</td>
<td>24</td>
<td>36</td>
<td>37</td>
<td>24</td>
<td>34</td>
</tr>
<tr>
<td>Gaming Machine Permit</td>
<td>18</td>
<td>27</td>
<td>14</td>
<td>21</td>
<td>25</td>
</tr>
<tr>
<td>Occasional License</td>
<td>86</td>
<td>70</td>
<td>84</td>
<td>86</td>
<td>95</td>
</tr>
<tr>
<td>Occasional Extension</td>
<td>86</td>
<td>77</td>
<td>86</td>
<td>107</td>
<td>70</td>
</tr>
<tr>
<td>Occasional Permission</td>
<td>71</td>
<td>65</td>
<td>55</td>
<td>50</td>
<td>47</td>
</tr>
<tr>
<td><strong>Total Number of Licenses issued</strong></td>
<td>445</td>
<td>434</td>
<td>433</td>
<td>462</td>
<td>453</td>
</tr>
</tbody>
</table>

Number of Licenses Refused: -

- 2001 – 1
- 2004 – 3

Number of Licenses Suspended: -

- 2004 – 2 (1 License holder 2 premises)

Number of appeals - 0

## SUBMISSION FROM DUMFRIES & GALLOWAY COUNCIL LICENSING BOARDS

### Total Number of Liquor Licences in force in each of the last five years

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>783</td>
<td>747</td>
<td>749</td>
<td>745</td>
<td>740</td>
</tr>
</tbody>
</table>

### Number of Complaints to Licensing Boards regarding licensed premises

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>4</td>
<td>3</td>
<td></td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>
Number of Suspensions of licences resulting from these Complaints

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
</table>

Number of Warning issued to licence holders resulting from Complaints

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
</table>

Number of Appeals

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
</table>

* Resulting from a refusal to renew a licence on the grounds the premises were no longer convenient for the sale of alcohol
** Resulting from refusal of the grant of an off sales premises (garage) as the Board agreed that the premises were not suitable or convenient for the sale of alcoholic liquor

Number of Successful Appeals

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
</table>

SUBMISSION FROM LICENSING BOARD, DUNDEE CITY COUNCIL

I refer to your letter of 21st March, 2005 and have listed below the information requested:-

<table>
<thead>
<tr>
<th>Information</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licenses in force</td>
<td>472</td>
<td>434</td>
<td>441</td>
<td>446</td>
<td>449</td>
</tr>
<tr>
<td>Complaints</td>
<td>4</td>
<td>7</td>
<td>4</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Suspensions</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Warnings</td>
<td>4</td>
<td>4</td>
<td>2</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Appeals</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Successful appeals</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

SUBMISSION FROM LICENSING BOARD, EAST AYRSHIRE COUNCIL

With regard to your letter of 21 March 2005 in relation to evidence relating to The Licensing (Scotland) Bill, please find undernoted requested information.

- The total number of liquor licenses in force:-

Licences in Force as at December 2004

<table>
<thead>
<tr>
<th>Type</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>28</td>
</tr>
<tr>
<td>Restricted Hotel</td>
<td>0</td>
</tr>
<tr>
<td>Public House</td>
<td>121</td>
</tr>
<tr>
<td>Restaurant</td>
<td>16</td>
</tr>
<tr>
<td>Entertainment</td>
<td>23</td>
</tr>
<tr>
<td>Refreshment</td>
<td>6</td>
</tr>
<tr>
<td>Off-sale</td>
<td>141</td>
</tr>
</tbody>
</table>

Total Licences - 335
Licences in Force as at December 2003

<table>
<thead>
<tr>
<th>Type</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>29</td>
</tr>
<tr>
<td>Restricted Hotel</td>
<td>1</td>
</tr>
<tr>
<td>Public House</td>
<td>122</td>
</tr>
<tr>
<td>Restaurant</td>
<td>16</td>
</tr>
<tr>
<td>Entertainment</td>
<td>23</td>
</tr>
<tr>
<td>Refreshment</td>
<td>5</td>
</tr>
<tr>
<td>Off-sale</td>
<td>141</td>
</tr>
</tbody>
</table>

Total Licences - 337

Licences in Force as at December 2002

<table>
<thead>
<tr>
<th>Type</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>30</td>
</tr>
<tr>
<td>Restricted Hotel</td>
<td>1</td>
</tr>
<tr>
<td>Public House</td>
<td>121</td>
</tr>
<tr>
<td>Restaurant</td>
<td>14</td>
</tr>
<tr>
<td>Entertainment</td>
<td>23</td>
</tr>
<tr>
<td>Refreshment</td>
<td>5</td>
</tr>
<tr>
<td>Off-sale</td>
<td>138</td>
</tr>
</tbody>
</table>

Total Licences 332

Licences in Force as at December 2001

<table>
<thead>
<tr>
<th>Type</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>30</td>
</tr>
<tr>
<td>Restricted Hotel</td>
<td>1</td>
</tr>
<tr>
<td>Public House</td>
<td>121</td>
</tr>
<tr>
<td>Restaurant</td>
<td>17</td>
</tr>
<tr>
<td>Entertainment</td>
<td>23</td>
</tr>
<tr>
<td>Refreshment</td>
<td>4</td>
</tr>
<tr>
<td>Off-sale</td>
<td>145</td>
</tr>
</tbody>
</table>

Total Licences 341

Licences in Force as at December 2000

<table>
<thead>
<tr>
<th>Type</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>32</td>
</tr>
<tr>
<td>Restricted Hotel</td>
<td>1</td>
</tr>
<tr>
<td>Public House</td>
<td>122</td>
</tr>
<tr>
<td>Restaurant</td>
<td>17</td>
</tr>
<tr>
<td>Entertainment</td>
<td>23</td>
</tr>
<tr>
<td>Refreshment</td>
<td>4</td>
</tr>
<tr>
<td>Off-sale</td>
<td>142</td>
</tr>
</tbody>
</table>

Total Licences 341

- The number of complaints to Licensing Boards regarding licensed premises:-
  
  2004 - 2
  2003 - 2
  2002 - 0
  2001 - 0
  2000 - 0

- The number of suspensions of licenses resulting from these complaints:-
  
  2004 - 2
  2003 - 0
  2002 - 0
  2001 - 0
  2000 - 0

- The number of warnings issued to licence holders as a result of these complaints:-
  
  2004 - 0
  2003 - 0
  2002 - 0
  2001 - 0
  2000 - 0

- The number of appeals:-
  
  2004 - 3
  2003 - 1
  2002 - 0
SUBMISSION FROM LICENSING BOARD, EAST LOTHIAN COUNCIL

I apologise for the delay in responding to your letter of 11th March 2005 regarding statistics the Justice 2 Committee wish to obtain relative to the Licensing (Scotland) Bill.

I advise you of the following information:

- The total number of liquor licenses in force:
  1999 – 276
  2000 – 238
  2001 – 271
  2002 – 274
  2003 – 276
  2004 – 279

- The number of complaints to the Licensing Board regarding licensed premises:
  1999 – 16
  2000 – 16
  2001 – 24
  2002 – 40
  2003 – 28
  2004 – 52

- The number of suspensions of licenses resulting from these complaints:
  None

- The number of warnings issued to licence holders as a result of these complaints:
  1999 – 9
  2000 – 5
  2001 – 7
  2002 – 10

- The number of successful appeals:-
  1 successful
  1 decision awaited - at avizandum
  4 withdrawn
2003 – 10

2004 – 11

- The number of appeals in each of the last five years:
  1 appeal against refusal to granting of extensions 2004.

- The number of successful appeals in each of the last five years:
  None

### SUBMISSION FROM LICENSING BOARD, EAST RENFREWSHIRE COUNCIL

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of licenses in force</th>
<th>Number of complaints</th>
<th>Number of suspensions</th>
<th>Number of warnings</th>
<th>Number of appeals</th>
<th>Number of successful appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>97</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2001</td>
<td>93</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2002</td>
<td>99</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2003</td>
<td>101</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>115</td>
<td>5</td>
<td>0</td>
<td>2/1 (1 ongoing)</td>
<td>0/3</td>
<td>0/1</td>
</tr>
</tbody>
</table>

### SUBMISSION FROM LICENSING BOARD, HIGHLAND COUNCIL

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of liquor licenses in force</th>
<th>Number of complaints regarding licensed premises</th>
<th>Number of suspensions of licences resulting from these complaints</th>
<th>Number of warnings issued to licence holders as a result of these complaints</th>
<th>Number of appeals</th>
<th>Number of successful appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>1461</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2001</td>
<td>1397</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2002</td>
<td>1412</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2003</td>
<td>1416</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>1430</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

### SUBMISSION FROM LICENSING BOARD, MIDLOTHIAN COUNCIL

Response to your letter of 21 March 2005 -

Total number of liquor licences in force in each of the last five years -

Number of complaints to Licensing Board regarding licensed premises in each of the last five years -

Year 2000 - 1  Year 2001 - 4  Year 2002 - 2  Year 2003 - 2  Year 2004 - 6

Number of suspensions of licences resulting from complaints in each of the last five years - 0

Number of warnings issued to licence-holders as a result of complaints in each of the last five years -

Year 2000 - 0  Year 2001 - 1  Year 2002 - 0  Year 2003 - 0  Year 2004 - 0

Number of appeals in each of the last five years -

Year 2000 - 0  Year 2001 - 0  Year 2002 - 1  Year 2003 - 0  Year 2004 - 0

Number of successful appeals in each of the last five years -

Year 2000 - 0  Year 2001 - 0  Year 2002 - 1  Year 2003 - 0  Year 2004 - 0

SUBMISSION FROM LICENSING BOARD, MORAY COUNCIL

In response to your letter dated 21 March 2005 please find details below.

The total number of liquor licences which are in force for 2004 in accordance with our Scottish Executive return was 348. Unfortunately we do not have copies of previous years, however, these have been published by the Scottish Executive in their reports.

To provide information on complaints would be an enormous task as any complaints and their follow up action are filed on individual premises files. Numbers would also depend on whether your definition of complaints included informal as well as formal, also whether objections/observations to applications were included and the results at the respective Board Meetings.

Again to provide the number of warnings we would have to go through all the individual premises files.

There does not appear to have been any appeals against decisions made since 1997.

I am sorry to be unable to be more helpful but I would have imagined that the Scottish Executive’s held statistics would assist you more than I can.
SUBMISSION FROM LICENSING BOARD, NORTH AYRSHIRE COUNCIL

I refer to your letter dated 21 March 2005. The information requested is as follows:-

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of liquor licenses in force</td>
<td>431</td>
<td>414</td>
<td>411</td>
<td>406</td>
<td>414</td>
</tr>
<tr>
<td>Number of complaints to Licensing Boards</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Number of suspensions resulting from complaints</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Number of warnings issued</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Number of appeals</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Number of successful appeals</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

I would add by the way of explanatory note that:

The Board does from time to time receive letters from the public raising issues with the operation of premises. Where they are alleged criminal conduct, they are passed to the police for investigation. Where these are signed, then the license holder may be contacted to ascertain their position, otherwise no action is generally taken.

The 2004 appeal was an application for Judicial Review. All other appeals were by way of summary application to the Sheriff Court.

I would comment that the value of appeal statistics may be somewhat limited as appeals are often used where applications have been refused, or suspensions imposed, on the basis of an individual applicant being unfit. By lodging an appeal, the premises may continue to operate and will utilise that time to replace the license holder with a more fit and proper person. Consequently appeals are more often used as a delaying tactic, than as a legal challenge to the decision taken by the Board.

SUBMISSION FROM LICENSING BOARD, NORTH LANARKSHIRE COUNCIL

I refer to your letter of 21 March 2005 regarding the above and I would advise you that the records held in these offices can only conclusively disclose the position in relation to the issues you raise in the last three years.

For the sake of convenience I simply propose repeating the enquiries you raise and then providing a response:-

- The total number of liquor licences in force in each of the last three years:-
  - February 2003 – 699
  - February 2004 – 684
  - February 2005 – 686

- The number of complaints to Licensing Boards regarding licensed premises in each of the last three years:-
  - 2003 – 3 (Hearings)
  - 2004 – 2 (Hearings)
  - 2005 – zero
• The number of suspensions of licences resulting from these complaints in each of the last three years:-
  2003 – 2
  2004 – 1
  2005 – zero

• The number of warnings issued to licenceholders as a result of these complaints in each of the last three years:-
  2003 – 1
  2004 – 1
  2005 – zero

• The number of appeals in each of the last three years:-
  2003 – 1
  2004 – zero
  2005 – zero

• The number of successful appeals in each of the last three years:-
  2003 – zero
  2004 – zero
  2005 – zero

SUBMISSION FROM LICENSING BOARDS, EAST AND WEST DIVISIONS, SCOTTISH BORDERS COUNCIL

Total number of liquor licences in force in each of the last five years

<table>
<thead>
<tr>
<th>WEST</th>
<th>EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>199</td>
</tr>
<tr>
<td>2001</td>
<td>213</td>
</tr>
<tr>
<td>2002</td>
<td>216</td>
</tr>
<tr>
<td>2003</td>
<td>213</td>
</tr>
<tr>
<td>2004</td>
<td>224</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WEST</th>
<th>EAST</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>241</td>
</tr>
<tr>
<td>2001</td>
<td>233</td>
</tr>
<tr>
<td>2002</td>
<td>236</td>
</tr>
<tr>
<td>2003</td>
<td>240</td>
</tr>
<tr>
<td>2004</td>
<td>243</td>
</tr>
</tbody>
</table>

There have been no complaints to the Licensing Board which resulted in suspensions of licences in either Division. In relation to the East Division there was one suspension of licence which resulted in an Appeal, the suspension being in 2002, the Appeal running until 2004 when it was dismissed by the Appellant. There were none in West.
SUBMISSION FROM SHETLAND ISLANDS AREA LICENSING BOARD

Thank you for your letter dated 21 March 2005, to which I am replying on behalf of the Clerk.

In reply to the first bullet point of your letter I have set out below the total number of liquor licences in force in Shetland over the past five years:-

At 31 December 2000 - 137 licences
At 31 December 2001 - 142 licences
At 31 December 2002 - 144 licences
At 31 December 2003 - 140 licences
At 31 December 2004 - 145 licences

In addition, throughout the past five years, there has been in force one Seamen’s Canteen licence, i.e. a Licence under part III of the Licensing (Scotland) Act 1976.

For the remaining bullet points in your letter the Shetland Islands Area Licensing Board have not received any formal complaints under the 1976 Act, issued any warnings or suspended any licences held by licensees of premises in Shetland over the past five years (from 1 January 2000 to 31 December 2004). In that period, only one appeal has been lodged (in 2002) against a decision of my Licensing Board. That was an appeal against a refusal of an application for grant of a new Restricted Hotel Licence. However, prior to a Hearing the Appellant decided not to proceed with the Appeal and arranged for it to be dismissed by the Court.

At this stage my own general views, perhaps evidenced by the statistics, are that the current regime is somewhat cumbersome and inflexible for addressing any problems there may be in the conduct of licensed premises. The Bill proposals would seem to offer a more flexible and pro-active approach, for example through the proposals for review hearings and for there being a range of sanctions available in the case of misconduct.

SUBMISSION FROM LICENSING BOARD, SOUTH AYRSHIRE COUNCIL

As requested, please find below statistics from South Ayrshire Licensing Board as requested:-

1. 2000 total number of licences 481
    2001 total number of licences 480
    2002 total number of licences 482
    2003 total number of licences 477
    2004 total number of licences 483
    2005 total number of licences 480

2. 2001 2 complaints
    2002 2 complaints

3. 2002 2 suspensions

4. none

5. 2002 1 appeal

6. none
### NUMBER OF LIQUOR LICENCES IN FORCE

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clydesdale</td>
<td>75</td>
<td>72</td>
<td>57</td>
<td>67</td>
<td>62</td>
</tr>
<tr>
<td>East Kilbride</td>
<td>n/a</td>
<td>n/a</td>
<td>101</td>
<td>117</td>
<td>113</td>
</tr>
<tr>
<td>Hamilton</td>
<td>n/a</td>
<td>n/a</td>
<td>200</td>
<td>224</td>
<td>271</td>
</tr>
<tr>
<td>Rutherglen &amp; Cambuslang</td>
<td>104</td>
<td>101</td>
<td>97</td>
<td>100</td>
<td>104</td>
</tr>
</tbody>
</table>

### NUMBER OF COMPLAINTS TO LICENSING BOARDS RE PREMISES

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Divisions</td>
<td>n/a</td>
<td>n/a</td>
<td>16</td>
<td>8</td>
<td>9</td>
</tr>
</tbody>
</table>

### NUMBER OF SUSPENSIONS ARISING FROM COMPLAINTS

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Divisions</td>
<td>n/a</td>
<td>n/a</td>
<td>1</td>
<td>2</td>
<td>2</td>
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</tbody>
</table>

### NUMBER OF WARNINGS ISSUED AS RESULT OF COMPLAINTS

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Divisions</td>
<td>n/a</td>
<td>n/a</td>
<td>15</td>
<td>6</td>
<td>7</td>
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</table>

### NUMBER OF APPEALS

<table>
<thead>
<tr>
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<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Divisions</td>
<td>n/a</td>
<td>6</td>
<td>0</td>
<td>2</td>
<td>6</td>
</tr>
</tbody>
</table>

### NUMBER OF SUCCESSFUL APPEALS

<table>
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<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Divisions</td>
<td>n/a</td>
<td>3</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

N.B. n/a means figures not available

*outcomes of most of 2004 appeals not yet known as ongoing

### SUBMISSION FROM LICENSING BOARD, STIRLING COUNCIL

*Number of liquor premises as at 15 March 2005*

<table>
<thead>
<tr>
<th>AREA</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotels</td>
<td>16</td>
<td>9</td>
<td>33</td>
<td>1</td>
<td>25</td>
<td>84</td>
</tr>
<tr>
<td>Restricted Hotels</td>
<td>1</td>
<td>1</td>
<td>10</td>
<td>-</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>Restaurants</td>
<td>6</td>
<td>21</td>
<td>10</td>
<td>-</td>
<td>3</td>
<td>40</td>
</tr>
<tr>
<td>Public Houses</td>
<td>10</td>
<td>52</td>
<td>11</td>
<td>12</td>
<td>13</td>
<td>98</td>
</tr>
<tr>
<td>Off Sales</td>
<td>21</td>
<td>74</td>
<td>27</td>
<td>20</td>
<td>24</td>
<td>166</td>
</tr>
<tr>
<td>Entertainment</td>
<td>1</td>
<td>10</td>
<td>-</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Refreshment</td>
<td>2</td>
<td>13</td>
<td>12</td>
<td>2</td>
<td>6</td>
<td>35</td>
</tr>
<tr>
<td>Porter, Ale &amp; Cider</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>TOTAL</td>
<td>57</td>
<td>180</td>
<td>103</td>
<td>37</td>
<td>76</td>
<td>453</td>
</tr>
</tbody>
</table>
Note: Approximately 150 registered clubs within Stirling Council Area.

**Income and number of liquor licence applications received**

<table>
<thead>
<tr>
<th>Class</th>
<th>Type</th>
<th>Yr from 1&lt;sup&gt;st&lt;/sup&gt; Jan 01 to 1&lt;sup&gt;st&lt;/sup&gt; Jan 02</th>
<th>Yr from 1&lt;sup&gt;st&lt;/sup&gt; Jan 02 to 1&lt;sup&gt;st&lt;/sup&gt; Jan 03</th>
<th>Yr from 1&lt;sup&gt;st&lt;/sup&gt; Jan 03 to 1&lt;sup&gt;st&lt;/sup&gt; Jan 04</th>
<th>Yr from 1&lt;sup&gt;st&lt;/sup&gt; Jan 04 to 1&lt;sup&gt;st&lt;/sup&gt; Jan 05</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Income &amp; Nos (Yr)</td>
<td>Income &amp; Nos (Yr)</td>
<td>Income &amp; Nos (Yr)</td>
<td>Income &amp; Nos (Yr)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£7536 (96)</td>
<td>£18560 (232)</td>
<td>£10240 (129)</td>
<td>£8,200 (98)</td>
</tr>
<tr>
<td>Main Licence</td>
<td>Renewal</td>
<td>£2966 (57)</td>
<td>£2700 (50)</td>
<td>£1674 (31)</td>
<td>£2396 (42)</td>
</tr>
<tr>
<td>Transfers</td>
<td>Confirmation</td>
<td>£988 (57)</td>
<td>£900 (50)</td>
<td>£486 (27)</td>
<td>£798 (42)</td>
</tr>
<tr>
<td>Transfers</td>
<td>Substitution</td>
<td>£4310 (50)</td>
<td>£5476 (61)</td>
<td>£5882 (65)</td>
<td>£6726 (59)</td>
</tr>
<tr>
<td>Transfers</td>
<td>Permanent</td>
<td>£140 (9)</td>
<td>£224 (14)</td>
<td>£96 (6)</td>
<td>£136 (8)</td>
</tr>
<tr>
<td>Alterations</td>
<td>Alterations</td>
<td>£108 (7)</td>
<td>£144 (9)</td>
<td>£176 (11)</td>
<td>£136 (8)</td>
</tr>
<tr>
<td>Outdoor Drinking</td>
<td>Outdoor Drinking</td>
<td>£20152 (260)</td>
<td>£20880 (261)</td>
<td>£20880 (261)</td>
<td>£23,936 (283)</td>
</tr>
<tr>
<td>Regular Extension</td>
<td>Renewal</td>
<td>£1152 (36)</td>
<td>£960 (30)</td>
<td>£960 (30)</td>
<td>£1152 (36)</td>
</tr>
<tr>
<td>Gaming Machines</td>
<td>New (incl Renewal)</td>
<td>£1024 (32)</td>
<td>£640 (20)</td>
<td>£480 (15)</td>
<td>£352 (11)</td>
</tr>
<tr>
<td>Gaming Machines</td>
<td>Transfer</td>
<td>£2080 (13)</td>
<td>£2560 (16)</td>
<td>£3200 (20)</td>
<td>£1376 (8)</td>
</tr>
<tr>
<td>Main Licence</td>
<td>New Licence</td>
<td>£1131 (9)</td>
<td>£805 (6)</td>
<td>£1806 (14)</td>
<td>£2070 (15)</td>
</tr>
<tr>
<td>Main Licence</td>
<td>Provisional S26 1 &amp; 2 use *</td>
<td>£128 (4)</td>
<td>£320 (10)</td>
<td>£280 (9)</td>
<td>£510 (15)</td>
</tr>
<tr>
<td>Main Licence</td>
<td>Finalisation</td>
<td>£14701 13,284</td>
<td>16,391 24,102</td>
<td>625 71,890</td>
<td></td>
</tr>
<tr>
<td>Total Applications</td>
<td>(+1000 S64/S33 per annum)</td>
<td>630</td>
<td>759</td>
<td>618</td>
<td>625</td>
</tr>
</tbody>
</table>

| Total Income from Brd Appl’s  |                   | 41,715 54,169                                           | 46,160 71,890                                           | 47,788 71,890                                          |

| Income from Appl’s            |                   | 14,701 13,284                                           | 16,391 24,102                                           | 625 71,890                                             |
| S64, S33, S34                 |                   | 56,416 67,453                                           | 62,551 71,890                                           | 47,788 71,890                                           |
List of applications refused

<table>
<thead>
<tr>
<th>No</th>
<th>Board Date</th>
<th>Type of Application</th>
<th>Decision</th>
<th>Reasons for Refusal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>06/10/1999</td>
<td>New Licence (Off Sale)</td>
<td>Refused</td>
<td>S17 1(d) Overprovision</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appeal Upheld</td>
</tr>
<tr>
<td>2</td>
<td>01/03/2000</td>
<td>Grant of a Children's Certificate (Hotel)</td>
<td>Refused</td>
<td>Application did not meet policy guidelines</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Only 1 Bar area, seating provided at bar and toilets for both sex could not be reached without children having to pass bar area.</td>
</tr>
<tr>
<td>3</td>
<td>04/10/2000</td>
<td>Provisional Grant 26(1) (Entertainment)</td>
<td>Refused</td>
<td>Application Not Competent in terms of the type of licence requested and the type of Entertainment to be provided.</td>
</tr>
<tr>
<td>4</td>
<td>04/10/2000</td>
<td>Grant of a Regular Extension (Entertainment)</td>
<td>Refused</td>
<td>As Above</td>
</tr>
<tr>
<td>5</td>
<td>04/10/2000</td>
<td>New Licence (Off Sale)</td>
<td>Refused</td>
<td>S17 1(d) Overprovision</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Refer back to Licensing Board</td>
</tr>
<tr>
<td>6</td>
<td>03/10/2001</td>
<td>New Licence (Off Sale)</td>
<td>Refused</td>
<td>S17 1(d) Overprovision</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appeal Dismissed</td>
</tr>
<tr>
<td>7</td>
<td>03/10/2001</td>
<td>Outdoor Drinking (Public House)</td>
<td>Refused</td>
<td>Application did not meet Policy Guidelines in terms of close proximity of neighbours and overlooking</td>
</tr>
<tr>
<td>8</td>
<td>05/06/2002</td>
<td>Renewal of Licence (Off Sale)</td>
<td>Refused</td>
<td>Fit &amp; Proper Renewal due same time as Suspension in force.</td>
</tr>
<tr>
<td>9</td>
<td>02/10/2002</td>
<td>Renewal of Regular Extension (Public House)</td>
<td>Refused</td>
<td>Renewal due same time as Suspension in place. (Application premature)</td>
</tr>
<tr>
<td>10</td>
<td>08/01/2003</td>
<td>New Licence (Off Sale)</td>
<td>Refused</td>
<td>Overprovision</td>
</tr>
<tr>
<td>11</td>
<td>03/03/2004</td>
<td>Provisional Grant 26(2) (Entertainment)</td>
<td>Refused</td>
<td>Overprovision and the suitable, character and layout of premises</td>
</tr>
<tr>
<td>12</td>
<td>03/03/2004</td>
<td>Grant of a Regular Extension (Entertainment)</td>
<td>Refused</td>
<td>As above</td>
</tr>
<tr>
<td>Complaint Rec’d fromr</td>
<td>Decision to Hold Hrg</td>
<td>L. Holder &amp; Complaint</td>
<td>Hearing Date</td>
<td>Action</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------</td>
<td>-----------------------</td>
<td>--------------</td>
<td>--------</td>
</tr>
<tr>
<td>Env Health</td>
<td>07/03/01</td>
<td>Noise complaints</td>
<td>04/04/01</td>
<td>Board took no action and agreed to grant retrospective application for alterations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No letting bedrooms</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alterations without</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>permission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>04/04/01</td>
<td>Under Age Sale</td>
<td>06/06/01</td>
<td>Board agreed to continue to Adjourned Board.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
<td>04/07/01</td>
<td>Board agreed to suspend licence for a period of 6 months.</td>
</tr>
<tr>
<td>Police</td>
<td>06/06/01</td>
<td>Outwith permitted hours</td>
<td>04/07/01</td>
<td>Board agreed to suspend licence for a period of 6 months.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>06/03/02</td>
<td>Fit and proper person</td>
<td>06/03/02</td>
<td>Board agreed to suspend licence for a period of 6 months.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police</td>
<td>06/03/02</td>
<td>Under Age Sale</td>
<td>03/04/02</td>
<td>Board agreed not to suspend licence.</td>
</tr>
<tr>
<td>Police</td>
<td>06/03/02</td>
<td>Under Age Sale</td>
<td>03/04/02</td>
<td>Board agreed to issue a warning letter.</td>
</tr>
<tr>
<td>Police</td>
<td>05/06/02</td>
<td>Outwith permitted hours</td>
<td>03/07/02</td>
<td>Board agreed to issue a warning letter.</td>
</tr>
<tr>
<td>Police</td>
<td>05/03/03</td>
<td>Under age sale</td>
<td>02/04/03</td>
<td>Board agreed to issue a warning letter.</td>
</tr>
<tr>
<td>Police</td>
<td>02/07/03</td>
<td>Under age sale</td>
<td>01/10/03</td>
<td>Board agreed to issue a warning letter.</td>
</tr>
<tr>
<td>Police</td>
<td>02/07/03</td>
<td>Under age sale</td>
<td>01/10/03</td>
<td>Board agreed to issue a warning letter.</td>
</tr>
<tr>
<td>Police</td>
<td>14/01/04</td>
<td>Outwith Permitted Hours</td>
<td>03/03/04</td>
<td>Hearing Continued at request of agent to obtain CCTV footage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>02/06/04</td>
<td>No CCTV video available Hearing proceeded without Board agreed to issue a warning letter.</td>
</tr>
<tr>
<td>Complaint Rec’ed from</td>
<td>Decision to Hold Hrg</td>
<td>L Holder &amp; Complaint</td>
<td>Hearing Date</td>
<td>Action</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------</td>
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<td>--------------</td>
<td>--------</td>
</tr>
<tr>
<td>Police</td>
<td>26/11/03</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>14/01/04</td>
<td>Under Age Sale</td>
<td>03/03/04</td>
<td>Board agreed to issue a warning letter</td>
</tr>
<tr>
<td></td>
<td>30/06/04</td>
<td>Noise &amp; ventilation problems</td>
<td>30/06/04</td>
<td>Board heard from Environmental Health – notice served to remove nuisance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>06/10/04</td>
<td>Planning – served a Planning Contravention Notice</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Board decided to hold hearing</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Agent Confirmed remedial works had been carried out to satisfaction of regulatory services</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Board agreed no further action</td>
</tr>
<tr>
<td>Police</td>
<td>30/06/04</td>
<td>Fit and proper person</td>
<td>30/06/04</td>
<td>Police outlined details of conviction</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>06/10/04</td>
<td>Board decided to hold hearing</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Clerk advised Board license holder was not available to attend meeting and that in any event licence holder had agreed to transfer licence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Board agreed no further action</td>
</tr>
<tr>
<td>Complaint Rec’d from</td>
<td>Decision to Hold Hrg</td>
<td>L Holder &amp; Complaint</td>
<td>Hearing Date</td>
<td>Action</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------</td>
<td>----------------------</td>
<td>--------------</td>
<td>--------</td>
</tr>
<tr>
<td>Police</td>
<td>06/10/04</td>
<td>Under Age Sale</td>
<td>03/11/04</td>
<td>Request by agent to continue hearing to January Board meeting</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12/01/05</td>
<td>Solicitor provided info on training &amp; new training procedures that are now in place</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Alleged Genuine Mistake</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No further action</td>
</tr>
<tr>
<td>Police 09/09/04</td>
<td>06/10/04</td>
<td>Under Age Sale</td>
<td>03/11/04</td>
<td>Agent requested hearing to be continued to January Board meeting</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12/01/05</td>
<td>Board decided to suspend licence for a period of 6 months</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal to Sheriff</td>
<td>01/03/05</td>
<td>Agent requested revocation of suspension – licence now transferred.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dropped after revocation of suspension</td>
<td></td>
<td>Board agreed to revocation request.</td>
</tr>
</tbody>
</table>

NOTE: Some companies hold several licences throughout Scotland, at present, there is no central record held of hearings which they have attended.

So theoretically, they could appear at various Boards throughout Scotland for a similar offence e.g. under age and, plead that they have training policies and procedures in place and that the offence should not have happened. The Board may then view this information in isolation (as mitigating circumstances) and only issue a warning. This means that there is no way of knowing that the training policies are effective.

List of licenses revoked

<table>
<thead>
<tr>
<th>Complaint Rec’d from</th>
<th>Decision to Hold Hrg</th>
<th>L Holder &amp; Complaint</th>
<th>Hearing Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>
Number of licenses reviewed

There is no review process under the existing legislation.

Number of licenses varied

<table>
<thead>
<tr>
<th>Date Rec’d</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 97</td>
<td>Entertainment: Ten Pin Bowling &amp; Laser Zone</td>
</tr>
</tbody>
</table>

The Licensing Board at present are only able to vary one type of licence and that is an Entertainment Licence. Stirling Licensing Board have varied one such licence in terms of the entertainment to be provided.

It is proposed that the new licensing legislation will mean an operating statement for each premises. I have assumed this means that information important to the trading activities would be included for example

Plan and layout of the premises submitted together with appropriate planning consent, building warrant, food safety certificates, firemasters consent etc. (as under existing legislation)
Details of personal licence holder(s)
Details of training from recognised training provider
Hours of Business
Will Music be provided if so by what means
Will Entertainment be provided if so what type
Will Food be provided, if so, what type of food and facilities will be made available
Will Children be allowed in the premises, if so, will facilities for the children be provided and what type of facilities e.g. play/soft room, children’s menu, baby changing facilities etc.
Will the plan provide on details of any outdoor area used to serve/consume alcohol.
Will letting bedrooms be available
Etc. Etc. Etc.

Under the proposed legislation, if a new personal licence holder is appointed to deal with a premises licence, they should sign the existing operating plan and state no change or, that they wish to change/vary the original submitted. If they wish to vary the terms of the licence they have to apply to the Board for approval and hopefully the Board will have powers to add any conditions it was felt reasonable to accommodate the changes/variation.

Noise (within) licensed premises

Type - Karaoke & Live Music

Complaints received either by Env. Health or by Licensing Section generally every year from May to October. In the summer because of the heat - windows are opened in the premises (or doors are left open) to let air circulate. This leads to noise escaping and causing nuisance to neighbours. Licence Holder usually advised on insulation and best practice e.g. more ventilation, maintenance of ventilation systems, double doors on entry and exits to premises to prevent the noise escaping. This is done on an informal basis since there is no provision for Licensing Board to add conditions to premises licence.
Type – Rubbish Bins

Complaints sometimes received regarding the emptying of rubbish e.g. bottles into storage bins at rear of premises - licence holders advised and told to instruct staff not to empty after a certain time at night and location of bins.

Type – Refrigeration/Ventilation

Complaints regarding noise from chiller cabinets/refrigeration units,

Noise (outwith) licensed premises

Type – Vehicles, noise from car doors slamming, noise from vehicles leaving engines running, etc.

Type - Patrons generally talking/laughing/shouting/fighting.

Noise -in general:- sometimes it only needs a change of licence holder with new ideas on how to attract customers for a complaint to arise. E.g. Karaoke, Live Band etc. There may have been no particular problems with how the premises were run beforehand and the situation has only arisen because of the change to licence holder.

The Licensing Board have no powers to deal with any change to the operation of the premises.

If a new applicant wishes to have the licence transferred to them - there is no information specifically requested - on how they intend to operate the licence. Under present legislation information like this cannot be taken into consideration when transferring the licence.

Noise – Outdoor Drinking

It is unusual for complaints to arise in Stirling in relation to outdoor drinking however we have had a few where the property adjoins other property i.e. it is not detached and is probably adjacent to someone’s garden. One licence holder went overboard and had a mechanical bull in the outdoor drinking area on Sundays. (This also was due to a change in licence holder and demonstrates how things can change).

The Board’s guidelines are important as they set out that the facility can only be used at certain times, no music and must be capable of being supervised at all times. Many of the premises in our area are more than suitable for this type of facility.

Drinking in Public Places – local bye law exists.

Extended Hours

When the Law Reform Act introduced changes to Regular Extensions the Stirling Licensing Board held meetings in several locations and invited licence holders to attend to discuss the implications of the changes. These meetings were well attended and discussions led to the existing policy. Basically during the meetings it emerged that all of the licence holders wanted no one to have an advantage over anyone else. Discussions also took place on nightclubs and in general it was accepted that nightclubs should be allowed to open later than the pubs.

Concerns were also raised, over the necessity for additional hours on an ad hoc basis e.g., Bank Holidays, Xmas Holidays etc., and the Clerk advised that if the licence holders were to accept a policy for regular hours then they could still apply for occasional extensions. Stirling Licensing Board set out arrangements for Xmas festive Period for these at their June/October meeting in order to allow licence holders to advertise in advance of the holiday period.

Following these meetings with the Licence Holders the normal guidelines for the terminal hour were proposed and accepted by the Board.
Suns to Thurs  (11.00pm to 12 midnight)
Fri to Sat  (11.00pm to 1.00am)

These hours are for Public House, Hotel, Restaurant, Clubs, Refreshment, Entertainment (No Dancing) (e.g. Hollywood Bowl) (Snooker Clubs)

Suns to Thurs  (11.00pm to 2.00am)
Fri to Sat  (11.00pm to 3.00am)

These hours are for dedicated nightclub facilities.

These hours keep a 2 hour differential between other licensed premises and the nightclubs and in general this has worked well with the licence holders applying for Occasional extensions for Bank Holidays, Xmas Holidays and other special events. The 2 hour differential was operated for a 6 month period to review whether the time differential would actually help better order in the city centre (instead of everyone exiting en masse). This did work better and was introduced as regular policy of the Board.

The Location of licensed premises and the Division of licensed premises (e.g. groups/types pubs and nightclubs) will have an impact on the routes taken by patrons leaving premises and therefore the routes taken will also have an impact on disturbances in the surrounding area.

In Stirling the impact of closure of pubs at 1.00am means that this is a prominent time for policing, patrons will either leave to go home or leave to visit a nightclub. The time frame of when the nightclubs empty is also important for safety and policing currently 3.00am at weekends.

A pilot project was introduced this year (2004) from mid November to January in association with the Safer City Co-ordinator appointed by the Scottish Executive. This looked at issues relating to the night time economy with the emphasis on transport, in particular dispersal of people at the end of the evening.

The project involved:
- the numbers of taxis/private hire vehicles available to cope with extra ordinary demand
- location of taxi stances- in designated area close in proximity to the largest nightclub;
- stewarding/booking agents at stances

The aim of the project was to ensure a quicker dispersal of crowds. Previously the stances had been monitored and it had been noticed there were less incidents and complaints when the queues were moving more quickly. This proved an accurate assessment during our project and was confirmed by the police. The project is finished and assessment and discussions are still ongoing with proposals for new stances and the numbers of vehicles.

The crux of the matter in Stirling City Centre (and I would imagine every city centre) is that the provision of Taxi Stances is a difficult issue. Customers do not want to walk very far from the premises in order to obtain a vehicle and this in turn adds to traffic congestion and noise outside licensed premises.

If a brand new nightclub or pub opens up this in turn would have an effect on any new arrangements i.e. a review would be necessary. It is not enough just to allocate more licensed plates; this would only have a severe affect on, normal business during less busy periods and would still pose a problem in terms of stances.

Late Hours Catering Facilities

These establishments are also linked with problems in terms of loitering, litter and noise. Stirling operate a policy whereby these premises have to close before the nightclubs, a section of the community would like them to remain open (those that attend the nightclubs) as would the licence
holders themselves. It was thought that perhaps a change could be accommodated whereby some facilities could remain open.

If they had seating to accommodate patrons (to reduce the noise levels, litter etc outwith these premises) serving hot fast food and non alcoholic drinks this could perhaps lead to better order on the streets. Initial discussions have taken place with a very good operator, in the city centre, who has indicated that they would not wish to do this because it would only lead to bad behaviour inside the premises and may be difficult to control.

There are a number of issues (interlinked) which contribute to the infrastructure of the night time/evening economy and all are interdependent. All of them contribute to the problems and complaints from the public and unlike the day time economy do not associate with each other in a business forum which would help contribute to changes in business practice. This has been recognised in the past year or two and some discussions have taken place.

Some of the issues like overprovision, could be perhaps better managed by, planning legislation. There could be put in place a footfall area between divisions and types of establishment. e.g. no two pubs (licensed premises) be any more than ????? yds of each other. This would be better than the subjective proposals put forward at present. I understand the need to allow market forces to dictate the demand/supply levels but there is also the need for operators to be able to invest and expect a return in terms of sustainability.

When premises are being built or altered into licensed premises Building Control regulations do apply but these are only standards and sometimes additional measures may be required to allow for the type of activity to take place on the premises. For example additional ventilation, additional sound proofing etc. The Licensing Board will then have to deal with the complaints at a later stage.

**Liquor Complaints**

<table>
<thead>
<tr>
<th>Date Rec’d</th>
<th>Complaint</th>
<th>Action</th>
<th>Comments Received</th>
</tr>
</thead>
<tbody>
<tr>
<td>17/09/97</td>
<td>Noise Karaoke</td>
<td>Copies to Licensee, Env Hlth &amp; Police 24/10/97</td>
<td>License Holder been spoken to by Police. Premises will be monitored</td>
</tr>
<tr>
<td>26/09/97</td>
<td>Stewarding Aggressive Stewards</td>
<td>Copies to Licensee &amp; Police 22/10/97</td>
<td>No response from Licence Holder or Central Scotland Police. Complainant has advised that there are court proceedings pending.</td>
</tr>
<tr>
<td>22/10/97</td>
<td>Noise Karaoke</td>
<td>Copies to Licensee, Env Hlth &amp; Police 24/10/97</td>
<td>Police letter 31/10/97 Licence Holder spoken to by Police. Five complaints received by the Police –Premises will be monitored</td>
</tr>
<tr>
<td>22/10/97</td>
<td>Noise Live Bands &amp; Karaoke</td>
<td>Copies to Licensee, Env Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Env Health have also spoken to Licence Holder &amp; Complainants</td>
</tr>
<tr>
<td>27/10/97</td>
<td>Noise Live Bands</td>
<td>Copies to Licensee, Env</td>
<td>Site visits made by Env Health</td>
</tr>
<tr>
<td>Date</td>
<td>Issue</td>
<td>Details</td>
<td></td>
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<td>------------</td>
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<td>-------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>29/10/97</td>
<td>Noise</td>
<td>Copies to Licencee, Env Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>29/10/97</td>
<td>Noise</td>
<td>Copies to Licencee, Env Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>31/10/97</td>
<td>Env Health have also spoken to Licence Holders &amp; Complainants</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>31/10/97</td>
<td>Env Health have also spoken to Licence Holders &amp; Complainants</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>29/10/97</td>
<td>Noise</td>
<td>Copies to Licencee, Env Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>3/11/97</td>
<td>Noise</td>
<td>Copies to Licencee, Env Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>3/11/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>3/11/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>29/10/97</td>
<td>Noise</td>
<td>Copies to Licencee, Env Hlth &amp; Police 31/10/97</td>
<td></td>
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<tr>
<td>3/11/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
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<tr>
<td>3/11/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>5/1/98</td>
<td>Noise</td>
<td>Copies to Licencee, Env Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>5/1/98</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>5/1/98</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td>Site visits made by Env Health Hlth &amp; Police 31/10/97</td>
<td></td>
</tr>
<tr>
<td>20/2/98</td>
<td>Late Night Drinking</td>
<td>Copy to police 20/2/98</td>
<td></td>
</tr>
<tr>
<td>20/2/98</td>
<td>No further action</td>
<td>Copy to police 20/2/98</td>
<td></td>
</tr>
<tr>
<td>23/3/98</td>
<td>Noise</td>
<td>Discuss with Head of Legal Services Police and Env Health</td>
<td></td>
</tr>
<tr>
<td>06/05/98</td>
<td>Staff behaviour</td>
<td>Letter to Centpol incident 2/5/98</td>
<td></td>
</tr>
<tr>
<td>06/05/98</td>
<td>Incident under police investigation</td>
<td>Incident under police investigation Police to report back</td>
<td></td>
</tr>
<tr>
<td>06/05/98</td>
<td>Police to report back</td>
<td>Incident under police investigation Police to report back</td>
<td></td>
</tr>
<tr>
<td>17/05/98</td>
<td>Outdoor Drinking</td>
<td>Email to Plg</td>
<td></td>
</tr>
<tr>
<td>17/05/98</td>
<td>Spoke to Plg</td>
<td>Letter to Licence Holder</td>
<td></td>
</tr>
<tr>
<td>17/05/98</td>
<td>Letter to Licence Holder</td>
<td>Letter to Licence Holder</td>
<td></td>
</tr>
<tr>
<td>7/10/98</td>
<td>Noise</td>
<td>Phoned Scottish Office</td>
<td></td>
</tr>
<tr>
<td>7/10/98</td>
<td>Meeting with Clerk and EH</td>
<td>Phoned Scottish Office</td>
<td></td>
</tr>
<tr>
<td>7/10/98</td>
<td>Meeting with Clerk and EH</td>
<td>Phoned Scottish Office</td>
<td></td>
</tr>
<tr>
<td>8/10/98</td>
<td>Sale of Alcohol to Under Age</td>
<td>Faxed to Police HQ for comments 12/10/98</td>
<td></td>
</tr>
<tr>
<td>8/10/98</td>
<td>Police to monitor</td>
<td>Faxed to Police HQ for comments 12/10/98</td>
<td></td>
</tr>
<tr>
<td>8/10/98</td>
<td>Faxed to Police HQ for comments 12/10/98</td>
<td>Faxed to Police HQ for comments 12/10/98</td>
<td></td>
</tr>
<tr>
<td>31/01/00</td>
<td>Re-opening Prev complaints re: noise</td>
<td>Copies to Env Health E-mail reply to Resident</td>
<td></td>
</tr>
<tr>
<td>31/01/00</td>
<td>Re-opening Prev complaints re: noise</td>
<td>Copies to Env Health E-mail reply to Resident</td>
<td></td>
</tr>
<tr>
<td>31/01/00</td>
<td>Re-opening Prev complaints re: noise</td>
<td>Copies to Env Health E-mail reply to Resident</td>
<td></td>
</tr>
<tr>
<td>31/01/00</td>
<td>New manager spoken to re: prev complaints</td>
<td>E-mail from Env Hlth New manager spoken to re: prev complaints</td>
<td></td>
</tr>
<tr>
<td>06/03/00</td>
<td>Treatment by staff</td>
<td>Letter from Licensee 13/03/00 Statement from member of</td>
<td></td>
</tr>
<tr>
<td>06/03/00</td>
<td>Treatment by staff</td>
<td>Letter from Licensee 13/03/00 Statement from member of</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
<td>Copies To</td>
<td>Notes</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------</td>
<td>--------------------------------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>15/03/00</td>
<td>Bins blocking public lane</td>
<td>Copies to Licensee 16/03/00</td>
<td>Letter from Licensee’s Solicitor 20/04/00 Assurances on action to be taken</td>
</tr>
<tr>
<td>11/05/00</td>
<td>Noise disturbance, fighting</td>
<td>Env Health checked noise levels – no formal legal disturbances observed.</td>
<td>Env Health checked noise levels – no formal legal disturbances observed.</td>
</tr>
<tr>
<td>15/05/00</td>
<td>Noise complaints</td>
<td>Copies to Police, Env Health</td>
<td>To be monitored</td>
</tr>
<tr>
<td>24/08/00</td>
<td>Noise disturbance</td>
<td>Copy to Police, Env Health</td>
<td>To be monitored</td>
</tr>
<tr>
<td>28/08/00</td>
<td>Noise disturbance</td>
<td>Copies to Licensee</td>
<td>Police replied</td>
</tr>
<tr>
<td>21/09/00</td>
<td>Lock-ins, noise disturbance</td>
<td>Copies to Police &amp; Licensee</td>
<td>Police held discussions with Licence holder</td>
</tr>
<tr>
<td>19/03/01</td>
<td>Complaint against Steward</td>
<td>Copies sent to premises, head office</td>
<td>Letter from Licence Holder – copied to Police and complainer 06/04/01 – stating further customer care training being undertaken. No further action taken</td>
</tr>
<tr>
<td>07/02/01</td>
<td>Complaint – various</td>
<td>Copies sent to premises, head office</td>
<td>Environmental health held site visit to discuss issues.</td>
</tr>
<tr>
<td>23/04/01</td>
<td>Complaint – treatment by staff</td>
<td>Copy sent to manager</td>
<td>Reply received from Licence Holder disputing details of complaint</td>
</tr>
<tr>
<td>30/04/01</td>
<td>Complaint – noise</td>
<td>Letter sent to head office</td>
<td>Letter received from owners of premises – willing to meet with residents and environmental health to discuss.</td>
</tr>
<tr>
<td>11/04/02</td>
<td>Noise Nuisance</td>
<td>Copies to EH &amp; Police</td>
<td>Further monitoring to take place</td>
</tr>
<tr>
<td>12/06/02</td>
<td>Stewarding Policies</td>
<td>Copy of Complaint to Operator</td>
<td>Letter from Licence Holder’s solicitor.</td>
</tr>
<tr>
<td>13/06/02</td>
<td>Overcrowding &amp; Pricing</td>
<td>Copy of Complaint to L Holder’s Agent</td>
<td>Police to monitor situation and licence holder advised of situation.</td>
</tr>
<tr>
<td>07/06/02</td>
<td>Noise/ Violence</td>
<td>Copy of complaint to Environmental Health and Central Scotland Police</td>
<td>Env Hlth visited complainers Complainer does not wish to pursue at moment.</td>
</tr>
<tr>
<td>28/06/02</td>
<td>Noise</td>
<td>Copy of complaint to Env Hlth &amp; Police</td>
<td>Email from EnvHlth Triple glazing now installed Front Door altered Ventilation improved</td>
</tr>
<tr>
<td>Date</td>
<td>Issue</td>
<td>Action</td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>July 2002</td>
<td>Neighbour complained to Env Hlth</td>
<td>Email to Licence Holder</td>
<td></td>
</tr>
<tr>
<td>August 2002</td>
<td>Pole Dancing at particular premises</td>
<td>Letter to manager of premises</td>
<td></td>
</tr>
<tr>
<td>Septemb er 2002</td>
<td>Treatment by Staff</td>
<td>Letter to manager</td>
<td></td>
</tr>
<tr>
<td>Septemb er 2002</td>
<td>Noise</td>
<td>Copy of Complaint to Env Hlth &amp; Police, Letter to manager of premises</td>
<td></td>
</tr>
<tr>
<td>October 2002</td>
<td>Noise</td>
<td>Copy of complaint to Env Health &amp; Police</td>
<td></td>
</tr>
<tr>
<td>26/10/02</td>
<td>Selling liquers Without licence</td>
<td>Copy to Police</td>
<td></td>
</tr>
<tr>
<td>/10/02</td>
<td>Noise</td>
<td>Meeting with licence holder</td>
<td></td>
</tr>
<tr>
<td>04/03/03</td>
<td>Stewarding</td>
<td>Copy of complaint to manager</td>
<td></td>
</tr>
<tr>
<td>18/03/03</td>
<td>Noise Nuisance</td>
<td>Copy of Complaint to En Hlth &amp; Police letter to licence holder</td>
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<tr>
<td>11/08/03</td>
<td>Noise Complaint</td>
<td>Email to Police &amp; Env Health</td>
<td></td>
</tr>
<tr>
<td>11/08/03</td>
<td>Noise Complaint</td>
<td>Fax to Police &amp; Env. Health</td>
<td></td>
</tr>
<tr>
<td>08/09/03</td>
<td>Noise Pollution</td>
<td>EH &amp; Town Centre Manager</td>
<td></td>
</tr>
<tr>
<td>15/09/03</td>
<td>Freshers Week Unsuitable promotions</td>
<td>Letter to L Holder</td>
<td></td>
</tr>
<tr>
<td>19/09/03</td>
<td>Under Age Youths in Bar</td>
<td>Licence Holder &amp; member of staff both Charged S69 (1) &amp; (5) &amp; Reported to PF PF = decided No Proceedings</td>
<td></td>
</tr>
<tr>
<td>29/10/03</td>
<td>Noise &amp; Discussions with</td>
<td>Discussions with complainer</td>
<td></td>
</tr>
</tbody>
</table>

Noise limiter installed.
Response – outdoor drinking area to be reinstated to original location
Response from Licence Holder
Response received from Licence Holder
Meeting with Clerk, Env Hlth
Meeting held with complainer and licence holder Env Health & Licensing Action Plan for remedial work agreed with timescale
Police to visit premises and advise shopkeeper of legislation
Further discussions to be held with Taxi Assoc and Clerk
Licence Holders held meetings with staff and complainants. Staff reprimanded, apology given.
Await Reply - Licence now transferred
New Licence Holder made aware of complaints.
Closed by Brewer New day to day manager
Closed by Brewer New day to day manager
No Action not enough specific information
Warning
Chief Constable advising Licensing Section for whatever action. Entered into register & warning letter. Solicitor challenging warning
Discussions with complainer
<table>
<thead>
<tr>
<th>Date</th>
<th>Issue</th>
<th>Action</th>
<th>Notes</th>
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</thead>
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<tr>
<td>11/12/03</td>
<td>Vandalism</td>
<td>Copy of letter to head office and licensed premises Ack letter to complainer</td>
<td>No response – Chased up dispute by Licence Holder over details of complaint</td>
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<tr>
<td>05/01/04</td>
<td>Fighting</td>
<td>Copy of letter sent to manager Ack letter sent to complainer</td>
<td>Police now investigating.</td>
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<tr>
<td>15/01/04</td>
<td>Policy Procedures Re confirmation &amp; temp transfers</td>
<td>Letter to Sols explaining the reasons for the Board’s Policy</td>
<td>No Further action</td>
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<tr>
<td>13/02/04</td>
<td>Behaviour &amp; Threats from Licence Holder</td>
<td>Copy of Letter to Police &amp; EH</td>
<td>No Action Request for permission to send letter to licensee – does not wish to pursue</td>
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<tr>
<td>25/02/04</td>
<td>Noise</td>
<td>Env Health To Monitor</td>
<td>No Action</td>
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<td></td>
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<td></td>
<td>EH to pursue</td>
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<tr>
<td>08/05/04</td>
<td>Behaviour</td>
<td>Letter to Licence Holder</td>
<td>Response from Licence holder disputes content of complaint No resolution</td>
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<td>28/05/04</td>
<td>Behaviour</td>
<td>Letter to Licence Holder</td>
<td>Premises Closed Transfer application recd</td>
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<td>Aug-to</td>
<td>Noise Behaviour</td>
<td>Letter to Licence Holder</td>
<td>Response received - meeting with Licence Holder in October 2004. No further action</td>
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<td>Sept/04</td>
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<td>23/09/04</td>
<td>Procedures For Board Adverts</td>
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**SUBMISSION FROM LICENSING BOARD, WEST LOTHIAN COUNCIL**

I refer to your letter dated 21 March 2005. The information requested is as follows:-

Total number of liquor licenses in force in each of the last 5 years as below:-

<table>
<thead>
<tr>
<th></th>
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<tr>
<td>393</td>
<td>388</td>
<td>394</td>
<td>390</td>
<td>403</td>
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</tbody>
</table>
The following are over the 5 year period. Have not split them into separate years as they straddle years but if you require this please contact me.

- Complaints – 14
- Suspensions - 2
- Warnings – 8
- Appeals – 4
- Successful appeals – 2

SUBMISSION FROM THE SCOTCH WHISKY ASSOCIATION

The Scotch Whisky Association (SWA) is the trade association representing the Scotch Whisky industry at home and abroad. We welcome the opportunity to provide evidence on the Licensing (Scotland) Bill.

The Scotch Whisky industry is committed to working with all stakeholders to tackle alcohol misuse and promote responsible consumption. Scotch Whisky distillers, for example, support a range of initiatives to encourage responsible enjoyment of their brands, including unit labelling, use of responsibility messages, server training and alcohol education initiatives.

At an industry level, the SWA has adopted a Code of Practice setting out minimum standards for the responsible marketing and promotion of Scotch Whisky, and is also closely involved in the preparation of industry standards, encompassing both producers and retailers, at a UK level.

Building on this work, we believe an appropriate, modern Scottish licensing system will play an important role in establishing an environment which encourages responsible attitudes to alcohol.

As the Justice 2 Committee considers issues relating to preventing crime and disorder in the context of the Licensing (Scotland) Bill, we would also like to highlight one omission from the Bill that is of importance to Scotch Whisky producers and which would, with its inclusion, help protect consumers from deception by illegal operators.

The SWA and its members take action around the world to protect Scotch Whisky against all forms of unfair competition. One example of the unfair practice encountered is 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. The cheaper spirit may not be whisky or it may be bootlegged. The re-filled spirit is then sold to consumers as genuine product.

The practice raises a number of concerns:

- Consumers are deceived as to the brand they are buying.
- Consumers’ health may be put at risk, as the re-filled spirit may be smuggled and potentially dangerous.
- Government loses revenue as no duty may be paid on the substituted spirit. Instead, profits go to the illicit market, sometimes to organised crime.
- Company brand building efforts are weakened, with perceptions of product quality undermined.

It is possible to prosecute cases of on-trade spirits substitution in Scotland using the provisions of the Trade Descriptions Act 1968, the Food Safety Act 1990, and the Trade Marks Act 1994.

Under these arrangements, however, 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. Despite being convicted, the licensee is unlikely to have a licence suspended or revoked, nor indeed have the offence taken into account when it comes to licence renewal.
The SWA believes that stricter penalties are therefore necessary to ensure licensees face appropriately severe consequences if they substitute branded spirits. Possible licence suspension or revocation, as well as consideration of such an offence during the licence renewal process, would have a strong deterrent effect.

During the passage of the Licensing Act 2003 (England and Wales), we welcomed the inclusion of on-trade spirits substitution as a ‘relevant offence’. Under section 129 of the Act, a personal licence holder who commits a ‘relevant offence’ may have that licence suspended for a period of up to six months, or forfeited entirely. The order for suspension or forfeiture is made by the relevant court.

As a result, offences which may have a potential impact on a personal licence include:

- Re-filling branded bottles;
- Substituting an alternative for the brand requested at the time of order;
- Misleading descriptions of alcoholic drinks;
- Supplying low quality or low-strength spirits;
- Charging at the till for a known brand while serving one of inferior quality.

The Licensing (Scotland) Bill offers an opportunity to include similar provisions in Scottish legislation, tackling criminal activity, protecting consumers, and assisting industry efforts to protect Scotch Whisky and other spirits. It would also ensure a consistent UK-wide approach to the problem, preventing a situation arising where Scotch Whisky received better protection south of the border compared to Scotland.

In this context, we would ask the Justice 2 Committee to recommend the inclusion of a ‘relevant offence’ for on-trade spirits substitution in the Licensing (Scotland) Bill.

The SWA will be providing written evidence to the Local Government and Transport Committee on other areas of the Bill. We will of course copy this evidence to the Justice 2 Committee in due course.

Needless to say, we would be happy to provide clarification or further information on the above.

SUBMISSION FROM THE SCOTTISH RETAIL CONSORTIUM

Thank you for letter of 15th March addressed to Ms Moriarty regarding the Justice 2 Committee’s scrutiny of specific objectives of the Licensing (Scotland) Bill.

To provide some insight into the activities of the Scottish Retail Consortium (SRC), we would point out that SRC was launched in April 1999 as a retail trade association for the full range of retailers in Scotland, from the major high street retailers and supermarkets to a number of trade associations representing smaller retailers. As a sector, retailing in Scotland employs 261,000 people (one in ten of the workforce) in 26,500 outlets across Scotland, and in 2002 Scottish retail turnover was £18.4 billion, accounting for 12% of total Scottish turnover.

The retail sector is key to the revitalisation and renewal of urban and rural communities across Scotland. The SRC’s members provide a vital community service, a focus for physical regeneration, and sustained investment in people and places.

The SRC’s parent association is the British Retail Consortium (BRC) based in London and Brussels.

We note that the objective of the Justice 2 Committee is to focus on two stated objectives of the Bill:

- Preventing crime and disorder
- Securing public safety
We would therefore wish to submit written evidence on the behalf of our members on anticipated impacts of the Bill on their operations, and for the sake of good order have categorised our comments relating to specific areas of operation or activity.

**Responsible retailing of alcohol: guidance for the off-trade**

The British Retail Consortium, the parent association of the Scottish Retail Consortium, was directly involved with the development and promotion of the *Responsible Retailing of Alcohol: Guidance for the Off-Trade*.

This document was developed in association with the Association of Convenience Stores and the Wine and Spirits Association. The document is also formally supported by the Scottish Grocers’ Federation, British Institute of Innkeepers, the National Federation of Retail Newsagents and the Northern Ireland Independent Retailers Trade Association.

The document is publicly available on the BRC website and we would refer you to: [http://www.brc.org.uk/policycontent04.asp?iCat=46&iSubCat=332&sPolicy=Food&sSubPolicy=Responsible+Drinks+Retailing](http://www.brc.org.uk/policycontent04.asp?iCat=46&iSubCat=332&sPolicy=Food&sSubPolicy=Responsible+Drinks+Retailing)

The development of this document was to provide guidance to new and existing license holders on the responsible retailing of alcohol and covers important areas namely underage purchases, promotion and advertising, staff training and the siting of alcohol in store. The retail sector is diverse with respect to size and type of operation, but the Guide provides best practice for the whole industry and was drafted to advise retailers on the possible changes following publication of the *Alcohol Harm Reduction Strategy for England* and the Nicholson Committee Report in Scotland.

A copy of the document will be provided with this letter and we believe that as a sector, the off trade has acted responsibly and proactively to ensure compliance with legislative requirements.

**Specific areas of concern**

Not withstanding the guidance laid down within the *Responsible Retailing of Alcohol: Guidance for the Off-Trade*, we would wish to highlight a number of areas where retailers are working to ensure compliance with legislation, however there may be aspects of the Licensing (Scotland) Bill that will impact on these organisations with respect to the prevention of crime and disorder or securing public safety.

**Proof of age**

Responsible retailers have always endorsed the need for a national proof-of-age card and would point out that within the *Responsible Retailing of Alcohol: Guidance for the Off-Trade*, reference is made to scheme such as the PASS (Proof of Age Standards Scheme) scheme.

The Bill (section 93) specifically lists documents considered as ‘acceptable’ proof of age, such as a driving license, passport or ‘other documents prescribed’. Without formal definition of ‘other documents prescribed’, we would urge that consideration be given to appropriate proof-of-age schemes, which operate successfully in other parts of the UK. 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.

**In-store notices on age related sales**

We fully endorse and accept the requirement to display in-store notices on Age Related Sales, but would respectfully ask that there be some flexibility with the wording required. The reason for this is 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 to serve over 18, where appropriate evidence is produced.
Once again if legislation is too prescriptive this will lead to confusion and possible confrontation at the point where the sale is made.

**Separate display areas**

Again the *Responsible Retailing of Alcohol: Guidance for the Off-Trade* provides clear good practice recommendations on the siting of alcohol in store and we believe there will be discretionary conditions in relation to the off trade.

There is a concern that the individual Boards could impose conditions relating to the provision of separate display areas, where they deem it appropriate. This is extremely unclear as to the definition of such an area with respect to store layout and design. There is also concern that this will eliminate such practices as the display of seasonal products such as port and stilton, outside designated areas.

If measures were put into place there would be a heavy burden on the retail sector, particularly for smaller stores. We would wish to point out that the vast majority of retailers sell alcohol in specific areas within their stores and there seems little evidence to support such measures would promote the objectives of the Bill and would be seen as being a totally disproportionate measure to the risk of an offence being committed.

**Training of staff**

Retailers are aware of the need for appropriate staff training requirements and many of their staff already attend the training programmes developed to support the Licensing Act 2003. These programmes are accredited by awarding bodies to a formal agreed syllabus and are designed to ensure managers and responsible individuals are trained to a consistent level.

There are concerns that the scope of the mandatory training to be provided to staff in Scotland will go beyond the managerial level personnel and extend to individual cashiers.

The SRC and its members believe 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 business and unnecessary bureaucracy and retailers must be allowed to manage their operation in the same manner to prevent any offence relating to underage sales.

In support of our commitment to training over and above the advice laid down within the *Retailing of Alcohol: Guidance for the Off-Trade*, BRC produces a short guide to restricted sales, which is widely used as a training aide by the retail sector. The BRC are also represented on Training Bodies Steering Committees such as the BIIAB (British Innkeepers Institute Awarding Body).

**Over-provision**

We note that the Bill proposes to strengthen current controls that already allow over-provision to be used as grounds for licence refusal. We are aware that under section 7 (1) of the Bill the assessment of over provision need not cover all licensed premises and could just relate to premises of a particular description.

Under section 7 (3) of the Bill the local Board must have regard to the number and capacity of licensed premises in the locality and under section 22 (d) can refuse a license on this assessment.

In the White Paper it was suggested that over provision requirements should only be applicable where the sale of alcohol is the main business activity; however this has not been carried forward whilst drafting the Bill. There are many of our 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 licenses in the same locality as a small grocery store then refusal of a license could occur depriving a community of a food store and limiting consumer choice.
We 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.

**Licensing hours**

We note under section 60 of the Bill that 24 hour licenses will only be granted in exceptional circumstances. We would wish to point out that the Policy Memorandum to the Licensing (Scotland) Bill (p2) states the aims of the Bill, which are;

- **Simplify and modernise the existing legislation** *(the Licensing (Scotland) Act 1976 and the relevant parts of the Law Reform (Misc. Provisions) (Scot) Act 1990)*;
- **Balance the rights of the majority of people who drink responsibly against the need to protect focal 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**

We would point you toward the italicized points and ask that consideration be given to those responsible retailers wishing to sell alcohol, who open for extended or on a 24 hour basis.

There is a significant number of the Scottish population who work ‘non-standard hours’ and would welcome access to retail outlets that offer a wide range of products, including alcohol, at times when they are able to shop. The larger retailers have opened stores for 24 hours for some time now and feel they have to discriminate against their customers who are night shift workers or those who work outside ‘non standard hours’, and do their weekly shop outside currently permitted times for the sale of alcohol. Control on the sale of alcohol would not differ within these outlets dependant upon the time of day, therefore there is strong argument to suggest that licenses should be granted to responsible retail outlets for 24 hour sale of alcohol, where there are customer demands to offer this service.

**Irresponsible promotions**

The SRC believes irresponsible promotions, which encourage alcohol abuse, binge drinking and anti-social behaviour should be controlled and would point you again to the *Responsible Retailing of Alcohol: Guidance for the Off-Trade*.

We feel the Scottish Executive have recognised that there are significant differences between on and off trade promotions, but the SCR does understand the need to keep under review.

The SRC welcomes this decision and will actively promote the recommendations made within the *Responsible Retailing of Alcohol: Guidance for the Off-Trade*.

**Children**

The SRC understands that there is an intention in the new legislation that there be ‘opt-in’ presumption against allowing children into licensed premises *(Policy Memorandum to the Bill ref para. 138)*. We feel the requirement to apply for an exemption is totally unnecessary for the retail sector, as premises are designed and operate as family environments and controls are in place to remove any risk of the sale of alcohol to children or young person.

In closing we would reiterate that the retail industry welcomes reform of the Licensing (Scotland) Act, but would hope that the cost of implementation and maintenance is proportionate to the risk of the commitment of an offence and recognition of control and management within a specific sector.
LIST OF UNPUBLISHED EVIDENCE

Responsible Retailing of Alcohol: Guidance for the Off-Trade, submitted by the Scottish Retail Consortium

The following documents were all submitted by Glasgow Licensing Board:

Summary of Licensing Board Policies

Applications for Licenses: Policy relative to the Fitness of Applicants to Hold a Licence

Addendum to Policy Relative to the Fitness of Applicants to Hold a Licence

Second Addendum to Policy Relative to the Fitness of Applicants to Hold a Licence

Policy Relative to the Conduct, Suitability, Convenience and Use of Off-sale Premises

Policy on Regular Extensions

Policy in Relation to the Training of Stewarding Personnel Present within Licensed Premises Providing Entertainment During the Regular Extension of Permitted Hours

Conditions Approved by Licensing Board to be Attached in Appropriate Cases to Entertainment Licences

Policy Relative to the Grant of Morning Regular Extensions of Hours

Policy Relative to Applications for Regular Extensions by the Holders of a Provisional Licence Under Section 26 of the Licensing (Scotland) Act 1976

Policy Relative to Applications for Permits to Install Amusement with Prizes (AWP) Machines in Licensed Premises in Terms of the Gaming Act 1968

Policy Relative to the Prevention of Racial, Political, Religious or Sectarian Conduct Associated with the Management of Licensed Premises

Code of Practice Relative to the Provision of Dance Entertainment in Licensed Premises
PAPER TO JUSTICE 2 COMMITTEE ON LICENSING BOARD STATISTICS

1. At its meeting on 8 March, in the course of its consideration of the Licensing (Scotland) Bill, the Committee agreed to seek statistical evidence on liquor licensing from Licensing Boards across Scotland. The following information was requested from each Licensing Board, if it was available:
   - The number of liquor licenses in force in each of the last five years;
   - The number of complaints to Licensing Boards regarding licensed premises in each of the last five years;
   - The number of suspensions of licenses resulting from these complaints in each of the last five years;
   - The number of warnings issued to license holders as a result of these complaints in each of the last five years;
   - The number of appeals in each of the last five years; and
   - The number of those appeals that were successful in each of the last five years.

2. The statistics received are presented below for each year from 2000 to 2004.

3. Submissions were received from every Licensing Board with the exception of East Dunbartonshire, Falkirk, Fife, Inverclyde, Orkney Islands, Perth and Kinross, Renfrewshire and West Dunbartonshire.

4. It should be noted that many of the Licensing Boards that did reply did not, or were not able to provide some, or all, of the statistics sought. This is noted in the tables below with a ‘?’.

Clerk to the Committee
5 May 2005
### 2000

<table>
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<th>Council</th>
<th>Number of licenses in force</th>
<th>Number of complaints</th>
<th>Number of suspensions</th>
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LICENSING (SCOTLAND) BILL 2005

CONTENT AND PURPOSE OF OPERATING PLANS

Introduction and Background

1. The production of an operating plan for each licensed premises is a mandatory requirement of the Licensing (Scotland) Bill. This paper is intended to provide the Committee with some background information on operating plans. The paper sets out in broad terms both what the operating plan is for and the kind of information which will be contained in it. The content and layout of the operating plan pro-forma will be prescribed in regulations and will be the subject of further consultation before it is finalised and laid before Parliament.

2. An Expert Reference Group was established following the publication of the Scottish Executive’s White Paper in May 2004. Its remit is:

   To work with the Scottish Executive to help create the framework for the Licensing (Scotland) Bill and associated regulations;
   To share information and expertise to assist the development of a range of detailed issues, including procedural issues, and to identify a suitable way forward on each issue as outlined in Annex A to the White Paper;
   To provide ad-hoc advice on other issues as they arise.

To assist our consideration of operating plans, a sub-group of the Expert Reference Group met in December to discuss the matter, and this paper reflects the outcome of those discussions and a further discussion at a meeting of the full Group. The membership of the Expert Group can be found at Annex A.

3. At present, there are seven different types of liquor licence which may be granted by a Licensing Board. These are: a public house licence; an off-sales licence; a hotel licence; a restricted hotel licence; a restaurant licence; a refreshment licence; and an entertainment licence. The Licensing (Scotland) Bill seeks to replace these with just two types of licence – the personal licence and the premises licence. An applicant for a premises licence will be required to submit with the application, a draft operating plan and a layout plan. The applicant will also be required to submit copies of planning consent, food hygiene and building control certificates for the Board’s information. However, the Executive should consider further how this would work for existing licensees under transitional arrangements. The draft operating plan will set out in some detail the nature of the premises for which a licence is sought and how it is proposed that the premises will be run. The licensing conditions will then be tailored for the premises for which a licence is being submitted, by reference to the draft operating plan.

Purpose of Operating Plans

4. The operating plan will be a standard pro-forma, issued to licence applicants together with a licence application form. It is not intended as a substitution for the licence application form itself. The pro-forma should be accompanied by a guidance note to assist licence applicants in correctly completing the operating plan. The
operating plan will be used to provide a general description of the nature and type of the premises for which a licence is being sought. The applicant will also be required to submit a layout plan with the application, and the operating plan, together with the layout plan, should be sufficient to enable the Licensing Board to determine what standard national and local licence conditions should apply.

5. The operating plan will be drawn up by the applicant, having regard to the Licensing Board’s published policy on matters such as, for example, opening hours and overprovision. The operating plan submitted by the applicant will essentially be a draft operating plan and as such, the Licensing Board will have power to require amendments to be made to ensure that it meets with the Board’s published policy statement and with their obligation to fulfil their duties in line with the licensing objectives set out in the Bill. Once the final operating plan has been agreed with the Board, it will form a part of the premises licence and it should be a standard national condition of that licence that the licensee abides by the terms of the operating plan. As such it is important that the operating plan details information in a sufficiently clear manner to enable the Licensing Board and enforcement agencies to determine if a breach of the operating plan is occurring. A copy of the operating plan, or a summary of it, should be issued with the licence and shall be displayed on the premises.

**Content of Operating Plans**

6. Following consideration by the Expert Reference Group of the content of the operating plan, it should include the following:

- **Name of applicant** – Where the applicant is a non-natural person (i.e. a company or partnership), the registered address of the company and the names of its directors or partners shall also be required. The office bearers of members clubs may also need to be stated but provided there is a simple way for this to be updated as members may change annually. If this information is provided on the licence itself it could however be omitted from the operating plan.

- **Exact Location (address) of the premises**

- **Name of designated personal licence holder** – The Bill requires there to be a single designated personal licence holder (the ‘premises manager’) whose name should be stated on the operating plan. It may also be appropriate to ask applicants to supply the names of any additional managers if available, though these should not be noted on the licence or operating plan as this would not be a statutory requirement.

- **Activities to be carried on in the premises** – The operating plan should specify all the activities to be carried on in the premises for which a licence is being sought. In practical terms, this would include matters such as whether food is to be served, whether the premises offer accommodation (i.e. a hotel or guesthouse), whether the premises is a cinema, theatre or bowling alley, whether there is a dance floor or provision of entertainment such as live music, karaoke or stand-up comedy. In order to provide a full picture of the
activities being carried on in the premises, the operating plan should, if it is relevant, specify the times during which these additional activities are taking place. The applicant might also be asked to indicate the balance of activities to be carried on (for example where a premises sells alcohol for consumption both on and off the premises, what proportion of sales they anticipate for on and off sales).

**Adult Entertainment** - In addition to the general question relating to activities being carried on in the premises, as specific mandatory conditions are to apply to the provision of adult entertainment, the operating plan should specifically ask whether the licensee intends to provide adult entertainment on the premises.

**Opening Hours** – The operating plan should specify these in as much detail as possible. For instance, where later opening is proposed at weekends, the operating plan should note both the proposed weekend and weekday opening hours.

**Nuisance and safety issues** – The operating plan should contain a question asking the applicant for the premises licence what plans they have, or will have in place to deal with nuisance and safety issues, referring specifically to some of the core licensing objectives in the Bill – the prevention of crime or disorder; the promotion of public safety and the prevention of public nuisance. The guidance notes accompanying the application form should contain information on what is appropriate. For example, for some late-opening premises in city centres, this might include provision of trained door staff, CCTV monitoring and plans for ensuring that customers do not cause disturbance to nearby residents when leaving the premises at night.

**Admission of children** – The operating plan should contain details of the proposed policy with regard to the admission of children to relevant premises. Applicants should state whether children are to be admitted to the premises. If they are, the operating plan should include details of where on the premises they are to be admitted, at what times they may be admitted and whether they are to be admitted unaccompanied or only when accompanied by an adult. Any lower age limit on children to be admitted to the premises should also be stated in the operating plan as provision of changing facilities is a mandatory condition of licence if children under 5 are to be admitted.

**Capacity of the premises** – Measures of the capacity of the premises should be contained in the operating plan. The methods of assessment of capacity will be determined by the National Licensing Forum.

**Conclusion**

7. We hope that the Committee finds this paper helpful in terms of setting out the purpose and content of the operating plans referred to in the Licensing (Scotland) Bill. Members of the Expert Group would be happy to provide additional information to Committee Members if they would find this helpful.
8. The content of this paper has been seen and endorsed by Scottish Ministers.

Expert Reference Group
February 2005
## ANNEX A

### MEMBERSHIP OF THE EXPERT GROUP

<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
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<tbody>
<tr>
<td>Mr Eric Anderson</td>
<td>Aberdeen City Licensing Board</td>
</tr>
<tr>
<td>Councillor Douglas Campbell</td>
<td>South Ayrshire Licensing Board</td>
</tr>
<tr>
<td>Mr Bill Cowan</td>
<td>Edinburgh Old Town Association</td>
</tr>
<tr>
<td>Mr Jack Cummins</td>
<td>Hill Brown Licensing</td>
</tr>
<tr>
<td>Mr Stewart Ferguson</td>
<td>Glasgow City Licensing Board</td>
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<tr>
<td>Mr Scott Landsburgh</td>
<td>Scottish Grocers’ Federation</td>
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<tr>
<td>Mr Gordon Millar</td>
<td>Scottish Beer &amp; Pub Association</td>
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<td>Mr Patrick Browne</td>
<td>Scottish Beer &amp; Pub Association</td>
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<td>Inspector Alan Murray</td>
<td>Strathclyde Police</td>
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<td>Dr Peter Rice</td>
<td>Scottish Association of Alcohol Action Teams</td>
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<td>Mr Donald Somerville</td>
<td>Highland Licensing Board</td>
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<tr>
<td>Mr Eddie Tobin</td>
<td>Bar, Entertainment &amp; Dance Association</td>
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<tr>
<td>Mr Paul Waterson</td>
<td>The Scottish Licensed Trade Association</td>
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**Scottish Executive Secretariat**

Jacqueline Conlan (Chair)

Contributions from:
- Tony Rednall
- Ian Fairweather
- Patrick Down
- Lindsay Young
- Gareth Warner
- Antonette Cerqua
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

8th Meeting, 2005 (Session 2)

Tuesday 8 March 2005

Present:

Mr Andrew Arbuckle
Des McNulty (Convener)
Dr Elaine Murray
Mr Frank McAveety
Alasdair Morgan (Deputy Convener)
John Swinburne

Apologies were received from Ms Wendy Alexander, Mr Ted Brocklebank and Jim Mather.

Financial Memoranda: The Committee considered its approach to scrutinising the Financial Memorandum of the Licensing (Scotland) Bill. The Committee agreed to adopt level 1 scrutiny for the Financial Memorandum i.e. that it should take no oral evidence on the Financial Memorandum, but should instead seek written comments from relevant organisations through its agreed questionnaire, and then pass these comments to the lead committee.
Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Response: COSLA did take part in the consultation exercise for the Bill and made representations in response both to Nicholson and to the White Paper that funding on the basis of full-cost recovery was the only means by which licensing boards could sustain the service provided in managing the licensing function.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Response: The fact that the Scottish Executive is about to undertake a Fee Review in connection with liquor licensing reflects the views expressed by both COSLA and a number of licensing boards and local authorities.

3. Did you have sufficient time to contribute to the consultation exercise?

Response: The Nicholson Report and the White Paper that followed covered a significant number of issues, many more than on which COSLA had a specific view. This was made clear in our responses. COSLA had sufficient time to contribute such views as it wished to express at the time.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Response: The Bill has no implications as such for COSLA, but may do for its member councils, as de facto employers of the staff who service the Licensing Boards and deliver the licensing functions. Scottish councils will not wish to see a process set in motion by this Bill, which leaves councils liable to pick up any additional staffing and associated costs which cannot be covered by the fee structure, which may, in turn have to be passed on to council tax payers. To that end, nothing other than full cost recovery will be welcomed. COSLA, its member councils and the local boards recognise the impact that a large rise in fees could have on small businesses, as well as the larger operators with multiple outlets across the country. There is no wish to impact on employment opportunities or other aspects of economic growth, which is why the opportunity to make local determinations on fees would be welcomed as a means to assist in this regard.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

**Response:** As stated above, the issue here is for councils as employers and the local boards. If the Bill seeks a self-financing process for the delivery of its proposals, then these proposals would be better met by local boards having the ability to set their own fee structure, within identified and mutually agreed parameters.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

**Response:** COSLA can only reiterate our comments as above. At this stage it difficult for local boards to determine their costs, as a number of issues remain to be discussed, such as grandfather rights and the determination of over-provision and these are linked to the issue of transitional arrangements. Until and unless these are fully addressed, COSLA’s view remains that full cost recovery is the only means of certainty on this matter.

**Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

**Response:** COSLA recognises and supports the links between the aims of the Bill and those linked to the reduction of anti social behaviour and promotion of health improvement in Scotland. However, given the scale and complexity of both these issues, it would be difficult to assess the associated costs.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

**Response:** The capacity to revise the fee levels needs to be retained to accommodate future changes arising either from subordinate legislation, developed guidance or simply in order to reflect changes in inflation rates, as well as movement on pay levels for licensing staff, who will be paid through the fee income.

Kathy Cameron  
Policy Manager  
COSLA  

21 April 2005
Written evidence from the Scottish Beer and Pub Association (SBPA)

About the Scottish Beer and Pub Association (SBPA)

The Scottish Beer and Pub Association was originally formed in 1906. Its members are Scotland’s brewing and large pub companies representing the licensed trade industry in Scotland. The main aim of the Association is to contribute to the economic and social wellbeing of Scotland through employment, investment and training.


Our parent association is the British Beer and Pub Association (BBPA). Our members account for 1,500 of the 5,100 licensed public houses in Scotland.

This submission is also lodged on behalf of the British Hospitality Association (BHA) in Scotland who support and agree with SBPA approach on this matter. The BHA is the national association for the hotel, restaurant and catering industry. The BHA has been representing the hotel, restaurant and catering industry for over 90 years. The BHA represents some 3,000 establishments in Scotland, across all sections of the industry – not just group-owned properties, but also hundreds of individually owned hotels and restaurants.

SBPA and Licensing Reform in Scotland

The SBPA, with the BHA, has been closely involved with the process of licensing reform in Scotland since the creation of the Nicholson Committee by the Scottish Executive’s then Justice Minister, Rt Hon Jim Wallace MSP, in May 2001.

Our former Chief Executive, Gordon Millar, served on the Nicholson Committee and was fully supportive of the final unanimous conclusions of the Nicholson Committee, with the exception of two minor issues on which he dissented.

SBPA as an organisation has supported the Nicholson Committee’s recommendations, which we believed offered a consensus for progress on which the industry, including the Scottish Licensed Trade Association (SLTA), licensing boards, the police and health bodies could agree. We agreed with the Nicholson proposals as a package and believe that their widespread support is recognised by the fact the most of the suggestions made by the Nicholson Committee are reflected in the Licensing (Scotland) Bill.

SBPA has also served on the Expert Reference Group (ERG) which was established by the Scottish Executive to advise it on the procedural aspects of the licensing reform process. SBPA has played an active and constructive
role in the Scottish Executive’s consultations on licensing reform and welcomes the opportunity to continue with that involvement through the Scottish Parliament’s deliberations on the Licensing (Scotland) Bill.

Introduction

1. SBPA, with the BHA, is fully supportive of the intentions and generally of the content of the draft Licensing (Scotland) Bill.

2. We remain supportive and committed to the implementation of the recommendations of the Nicholson Committee, particularly as they relate to: the introduction of premises and personal licences; consolidation of the current seven types of premises licences into one; and the abolition of the current permitted hours approach to licensing of premises, which we believe would all contribute to a welcome reduction in the bureaucracy around the operation of Licensing Boards in Scotland.

3. We welcome and support the Scottish Executive’s comments as stated in the Financial Memorandum accompanying the Bill, at Section 301, that “The Executive recognise that the majority of individuals drink responsibly and want to ensure that social drinking in Scotland can be enjoyed in a safe welcoming environment.”

4. However, we must take issue with some of the assertions contained in the Memorandum at Section 303 relating to the Scottish Executive’s own research report ‘Alcohol Misuse in Scotland Trends and Costs’ and the statement that “the cost imposed upon the NHS in Scotland at 2001/02 prices was £95.6 million, and the total cost to Scottish society was estimated to be £1.1 billion.”

5. The report itself says of its own cost estimates that “those occurring outwith the Health service should be treated with caution. Much of these are based on findings from research papers taken from the ‘Alcohol Misuse in Scotland Trends and Costs’ report, rather than any robust statistics.” The NHS costs highlighted in the research paper account for less than 10% of the total costs. On that basis, using the Executive’s own disclaimer, the other 90% plus of costs suggested by the paper, including policing and wider societal costs, are not “robust” and should be treated with “caution.”

6. As an Association, we take very seriously the responsible use of alcohol and its misuse by a small minority of the Scottish public. However we do not believe that the ‘Alcohol Misuse in Scotland Trends and Costs’ report produced by the Scottish Executive gives an accurate position regarding the health costs and indeed benefits of responsible alcohol consumption. It is established medical fact that moderate alcohol drinking, as practised by the vast majority of the population, produces health benefits.

7. As the Nicholson Committee itself concluded “given that the majority of people in Scotland drink sensibly and responsibly, the licensing system
should be as free from restrictions as possible.” We believe that this should inform the drafting of the Licensing (Scotland) Bill.

COMMENTS ON THE FINANCIAL MEMORANDUM

8. In general, we are concerned that the Financial Memorandum to the Licensing (Scotland) Bill does not deal in adequate detail with a number of significant costs which will be introduced by the Bill. These are detailed below.

FEE STRUCTURE

9. We note from Section 317 that the Scottish Executive will be commissioning a full fee review to inform the new fee structure under the Licensing (Scotland) Bill and this is expected to be published in July 2005.

10. It is self evident that the largest part of the costs arising from the reform of Scotland’s licensing laws will arise through the introduction of a new fee structure for personal and premises licences which will be recouped from the licensed trade. However, we are concerned at the current lack of detail on the proposed fee structure for the new licensing system which is a critical issue for the business community.

11. The industry recognises that there will be an increase in fees overall given the expanded scope of the Licensing Standards Officers and that “larger” premises will be asked to pay proportionately more, as is suggested in Section 342. However, this is already the case with larger premises paying more in business rates with this figure directly related to their turnover. Regard must also be had to the nature of the business carried on. In the hospitality industry there can be huge diversity with some premises being primarily bars with food operations and vice versa. Some primarily bars with bedrooms and vice versa.

12. It should also be noted that although many premises in Scotland are part of a larger retail pub chain, many of these premises are leased or independently managed. We would not wish the new Licensing Boards to “goldplate” their new licensing functions, creating new processes rather than building on those that already exist, with the licensed trade picking up the costs. The licensed trade encompasses a huge variety of businesses and a fair balance on fees needs to be struck.

13. We would hope that the Scottish Executive would be in a position to provide the final detail of how the new fee structure will work prior to the Bill being passed by the Scottish Parliament, so that this can be subjected to further scrutiny.

14. Indications from England and Wales are that the new fee structure has increased costs to the trade by a factor of four and this will constitute a major cost to the industry going forward. Indeed, it may be that the
Scottish Executive wishes to consider transitional support for the new Boards in order to offset some of the costs to the industry.

**Advertising and Neighbour Notification Costs**

15. We welcome the intention of reducing the costs of advertising new and existing application as indicated in Section 325. However, we are very concerned that far higher additional costs will be incurred because of the Bill’s intention of widening the direct notification of neighbours as outlined in Section 327. The benefit of notification in this way needs to be balanced against potential costs. For small operators in densely populated areas the costs could be unreasonable.

15. As an Association, we are supportive of the suggestion that the notification of near neighbours in relation to licence applications should be broadened. However, we are opposed to increase the radius for this notification to 50 metres. We would oppose this change given that it will impose significant additional costs, especially in urban areas, on local Boards that will assume responsibility for administering this notification system, for marginal benefit in terms of further informing local communities of any application.

16. We do not believe the Financial Memorandum adequately quantifies these additional new costs.

**Objections by “Any Person”**

17. We note in the Bill the intention of significantly widening the rights of objectors. We would suggest that the right of “any person” to lodge objections as defined in the Bill is too wide and will again introduce unnecessary costs into the licensing process for marginal public benefit.

18. 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.

19. 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.

20. We do not believe the Financial Memorandum adequately deals with these issues.
Training Costs

21. The additional training requirements as outlined by the legislation will impose additional costs on the licensed trade as suggested at Section 343.

22. Many of our members already undertake accredited in-house training programmes and training is viewed as an essential component in improving their customers’ experience. We would ask that any statement of requisite qualifications for bar staff or managers recognises this and that these should not be unfairly excluded from the training qualifications stipulated in regulations. We also believe that the list should not be too prescriptive given that this will again restrict the training options for companies and drive up the unavoidable costs of training.

23. It is also important for the prescribed qualifications to reflect the fact that during the initial transitional period when individuals are applying for personal licences they may not have had the opportunity of obtaining any new qualifications stipulated under any legislation.

Transitional Arrangements

24. It is clear that in moving from the current licensing regime under the 1976 Licensing (Scotland) Act to the new regime that a process has to be agreed for this to happen as timeously and with as little upheaval as possible consistent with the new licensing structure.

25. It is evident from the experience of England and Wales that this transitional process can impose significant additional costs for the licensed trade in lodging applications in the new style of application, for example in drafting and producing a new operating plan which meets the requirement of the Licensing Board and in supplying the appropriate consents.

26. We do not believe the Financial Memorandum has adequately quantified these costs, with these being briefly suggested in Section 352.

27. In England and Wales, the Government has granted the licensed trade so-called “grandfather rights”. This is a provision exempting persons or other entities already engaged in an activity from rules or legislation affecting that activity.

28. We would therefore propose that the Scottish Parliament accept that established businesses which enjoy the benefits of a liquor licence and hours in terms of the Licensing (Scotland) Act 1976 should have the presumption of being entitled to a premises licence with existing hours and be excluded from having to provide Section 48 certification on the basis that such a presumption may be rebutted if it can be demonstrated by an objector that the operation of any such business materially contradicts the Licensing objectives.
29. If an objector can demonstrate that the operation of any such business materially contradicts the Licensing Objectives then a premises licence for an established businesses should only be refused if the draft operating plan for such business cannot reasonably be amended to resolve such contradictions.

30. We also believe that the transition from the current regime to the new one should be completed within as short a timescale as is possible consistent with good administration. Given that the process of licensing reform began in Scotland in May 2001 and that it could be late 2007 before any Licensing (Scotland) Act is enacted we believe it would be poor administration to have, for example, a further three year transition period which could mean that licensing reform would have taken the best part of a decade to complete.

New Technology

31. We are disappointed that the Financial Memorandum to the Bill does not seek to progress the opportunities offered by new technology to minimise the costs which will be introduced by the new Licensing (Scotland) Bill.

32. Given the very large number of premises and individual personal licences that will be created by the new regime as indicated in Section 322, and the fact that much of the processing of these will be the same across individual Licensing Board areas, we are surprised that the Memorandum does not more fully embrace the opportunity for minimising physical paperwork by recommending the use of council websites and shared data areas particularly in relation to the production of the required consents on planning and building control issues by applicants.

33. We would ask that the Finance Committee give fuller consideration of the potential scope of the proactive usage of new technology given the once in a lifetime opportunity to progress this issue offered by the Licensing (Scotland) Bill, minimising costs for the licensing trade, councils and their Licensing Boards. The start up costs will be easily recouped in the savings of time and money to the public and private purse and the benefits enjoyed on an on-going basis.

April 2005
FURTHER SUBMISSION FROM THE SCOTTISH BEER AND PUB ASSOCIATION

Local Government and Transport Committee’s Stage 1 Report On Licensing (Scotland) Bill

Industry Response

About the Scottish Beer and Pub Association (SBPA)

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SBPA and Licensing Reform in Scotland

The SBPA has been closely involved with the process of licensing reform in Scotland since the creation of the Nicholson Committee by the Scottish Executive’s then Justice Minister, Rt Hon Jim Wallace MSP, in May 2001.

Our former Chief Executive, Gordon Millar, served on the Nicholson Committee and was fully supportive of the final unanimous conclusions of the Nicholson Committee.

SBPA as an organisation has supported the Nicholson Committee’s recommendations, which we believed offered a consensus for progress on which the industry, licensing boards, the police and health bodies could agree. We agreed with the Nicholson proposals as a package and believe that their widespread support is recognised by the fact the most of the suggestions made by the Nicholson Committee are reflected in the Licensing (Scotland) Bill.

SBPA has also served on the Expert Reference Group (ERG) which was established by the Scottish Executive to advise it on the procedural aspects of the licensing reform process. SBPA has played an active and constructive role in the Scottish Executive’s consultations on licensing reform and welcomes the opportunity to continue with that involvement through the Scottish Parliament’s deliberations on the Licensing (Scotland) Bill.

In general terms the Scottish Beer and Pub Association welcomes the conclusions of the Local Government Committee in relation to the Licensing (Scotland) Bill. However, on some issues we disagree with the conclusions of the Committee and these are covered in the enclosed response.
SBPA would endorse the content of clauses 1 to 4.

**Licensing boards**

SBPA endorses the content of clauses 5 and 6.

**Size, composition and quorum**

In relation to clause 7, SBPA would express its concern at any suggestion of increasing the size of Licensing Boards beyond the current numbers of members. We do not believe that having larger Licensing Boards will necessarily improve their efficiency or operation, nor lead to better decision making. We would point to the fact that the Nicholson Committee said:

“We have come to the conclusion that there is a sound case for reducing the size of licensing boards, and for reducing the number who should sit in public for the determination of applications and other matters. Apart from meeting the problems which we have noted above such a course would also, we believe, make it easier and more practicable for those board members who are to participate in public hearings to be given appropriate training. We deal with that topic in the following paragraphs of this chapter. The precise number of members who should constitute a full board, and the number who should sit at any one time, may be open to some debate. However, it is our view that a full board in a council area which has not been divided into licensing divisions should comprise a maximum of 15 members, and that the full board for a licensing division should comprise a maximum of 10 members.”

In relation to clause 8 we would endorse the Committee’s concerns. Similarly in relation to clauses 9 and 10, although we believe for the sake of consistency within licensing board areas there should be a limit on the “divisionalisation” that can take place within Boards believing that this concept taken to extremes could undermine much of the proposed “modernisation” of the operation of Boards.

**Licensing Standards Officers (LSOs)**

SBPA would endorse the Committee’s comments in clauses 11 to 16. In relation to clause 17 and the costs arising to the licensed trade of the operation of LSOs we fully support the Committee’s recommendation 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**

SBPA endorses the content of clauses 18 and 19. In relation to clause 20 we are fully supportive of the Committee’s encouragement of the creation of a national database of personal licence holders. We believe this development would be the most effective method of operating the personal licence holder regime and believe that the costs of introducing it would be less than the costs of operating 32 separate licensing systems.

SBPA notes the Committee’s comments in clause 21, but has no comment to make.

**National Licensing Forum**

SBPA would fully endorse the Committee’s comments in clauses 22 and 23.

SBPA would draw to the attention of members of the Committee its major concern that the National Licensing Forum as currently constituted does not adequately represent the concerns of the on licensed trade and as such would ask the Committee to act on its
comments in clause 24 that: “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.” We believe the Committee should take further evidence from the Minister on this issue.

**Local licensing forums**

SBPA would endorse the Committee’s comments in clauses 25 to 27, and welcomes the fact that the Executive has agreed to increase the proposed number of members on any Forum to fifteen. We would also ask that representation from the licensed trade on any Licensing Forum is representative of the on-licensed trade, given its diversity.

**Licences: general points**

**Single premises licence**

SBPA would endorse the Committee’s comments in clauses 28 and 29.

**Excluded premises: garages and petrol stations**

SBPA notes the Committee’s comments in clause 30 and has no comment to make.

**Vessels, vehicles and moveable structures**

SBPA notes the Committee’s comments in clause 31 and has no comment to make.

**Vehicles hired for entertainment purposes**

SBPA notes the Committee’s comments in clause 32 and has no comment to make.

**Appeals**

SBPA endorses the Committee’s comments on clause 33.

**Occasional licences**

SBPA notes the Committee’s comments in clause 34 and 35, and has no comment to make.

**Investment in areas surrounding licensed premises**

SBPA notes the Committee’s comments in clause 36 that: “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.”

Our view is that any conditions imposed on a licence holder in relation to the operation of their premises should be appropriate and commensurate with any issues arising from the operation of those premises. The Licensing Bill already gives local Licensing Boards the powers to impose these conditions where appropriate and we would be concerned if this became a general provision rather than a specific one. We would point to the fact that licensed premises across the UK already pay £22 billion in duties, business taxes and rates to the government, and we would be opposed to any moves to increase their costs further.

We would also point to the fact that the Executive over the last several years has been progressing towards the introduction of Business Improvement Districts in Scotland
which is already seeking to address this issue across all property owners and not specifically operators of licensed premises.

**Licences: Administrative arrangements**

**Open ended licences**

We note the Committee’s comments in clause 37, and accept that this matter should be reviewed and monitored by the National Licensing Forum. We also accept the need for the public to be informed about their rights under the new regime. We would however suggest this would best be achieved at a local level rather than by some form of national activity.

**Objections**

We note the Committee’s comments in clause 38 and would repeat our concern that the proposal to allow anyone the right to object to a licence application is too wide and will introduced financial costs into the licensing regime which will be borne by the licensed trade without good reason. 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 this will add to their costs. We believe that the restricting the right of objection to those with a “direct and material interest” as defined by the Daniels Committee would be adequate and still lead to a broadening of the involvement of the public as objectors in the licensing regime.

**Appeal rights for objectors**

We note the Committee’s comments in clause 39 and its suggestion that a de facto third party right of appeal for objectors to a licensing application which is granted by a Licensing Board. We are totally opposed to the creation of such a right, given that objectors have the opportunity to make their case at a local Licensing Board, and have a broadened role within the licensing system itself. Granting this additional right would further add to the costs of the licensing regime in Scotland, impacting on investment and delaying the opening of new premises where objectors sought to mount legal action against an application which had been approved.

We note that the Scottish Executive has recently ruled out the creation of a third party right of appeal for objectors to planning applications and we cannot see how introducing one in the context of the licensing system is consistent with this approach on planning. As the Communities’ Minister Malcolm Chisholm said in launching the Executive’s proposals for reforming the planning system: “In light of the proposals to ensure more fairness, balance and greater involvement in the planning system, our white paper does not propose a third party right of appeal.” We would argue a similar situation applies in relation to the Licensing Bill.

**Local authorities holding licences: questions in relation to the European Convention on Human Rights (ECHR)**

We note the Committee’s comments in clause 40, and have no comment to make.

**Fees regime**

SBPA would endorse the Committee’s comments in clause 41.
We note the Committee’s comments in clause 42. However, we would be totally opposed to the Committee’s suggestion of allowing “flexibility” for local Licensing Boards to decide their own fees. We believe that there should be a nationally set fee structure which would apply across Scotland and which would reimburse individual licensing boards the costs of their operation.

SBPA would endorse the Committee’s comments in clause 43, but would suggest that any new banding structure for fees need not of itself be so onerous as to cause financial hardship to premises which have “a high rateable value but containing only a very small licensed bar.” We would point to the fact that the fee structure under the new licensing regime in England and Wales has introduced a “fee multiplier” for the fees payable by applicants operating in properties with higher rateable values where their primary form of trading is the sale of alcohol, meaning that hotels and other non-public house licensed premises pay proportionately less. We feel incorporating this into the fee regime in Scotland would address the Committee’s concern on this point.

SBPA would endorse the Committee’s comments in clauses 44 and 45.

Opening hours

Ending of ‘permitted hours’

SBPA would fully endorse the Committee’s comments in clause 46.

Occasional extensions

SBPA would endorse the Committee’s comments in clauses 47 and 48.

Presumption against 24 hour drinking

SBPA notes the Committee’s comments in clauses 49 to 51. Whilst it is difficult for us to envision a situation in which a licensee would seek to open for 24 hours, we believe that it is consistent with the principles of the Licensing Bill and the ending of the permitted hours approach to licensing hours that it should be left to local licensing boards to make these judgements.

We believe that the presumption against 24-hour opening was introduced by the Executive to stop the possibility of a premise being permanently open, not necessarily to stop a premises having the opportunity to make this case for these hours. In line with this we believe that a presumption against 24-hour opening is adequate to deal with this issue.

Premises operational issues

Children

SBPA notes the Committee’s comments in clause 52, and expresses it disappointment that the Committee did not feel it could endorse an opt-out approach for allowing access to licensed premises by children with supervision. We would argue that if the Committee does not feel it can support this opt-out approach as advocated by the trade it is somewhat contradictory for the Committee to then continue to clause 53 where it “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**

SBPA notes the Committee’s comments in clause 54 and would highlight the fact in response to clause 55, that the Security Industry Authority’s remit has now been extended to Scotland and that it will issue the first licences to door stewards in Scotland by late 2006.

**Training**

SBPA endorses the Committee’s comments in clause 56.

**Transitional arrangements and grandfather rights**

SBPA would endorse the Committee’s comments in clause 57, however we would respectfully suggest that these comments are to a certain extent contradicted by comments in subsequent paragraphs, for example, the Committee suggests “not to have the licensing boards operating two systems for any longer than is necessary.” There is no suggestion that two systems would be operating at the same time. This would be addressed by having an appointed date when all new licences and conditions would come into effect.

In relation to the contents of clause 58 we have made detailed representations on the transitional process, but would broadly endorse the Committee’s view.

In relation to clause 59 however, we would point out that under the current regime licensing boards have sought to have licensees adapt their buildings to comply with modern building standards, but that they have also largely accepted where this is not possible because of the physical characteristics or nature of the buildings, that these premises should be allowed to continue trading. We are concerned at the implication in the Committee’s comments, “with an understanding that all licensed premises will have to comply with current building standards,” and “wished to continue trading there at the end of the interim period” that premises could be closed when this has never been an option fully used by licensing boards up until this point. We would therefore which to strongly dissent from the Committee’s comments on this issue and ask that the Committee does not proceed on this point with amendments to the Bill.

**Overprovision**

SBPA endorses the Committee’s comments in clauses 60 to 63.

**Irresponsible drinks promotions**

**Differential pricing policy**

SBPA endorses the Committee’s comments in clause 64 and notes that the Executive has proposed increasing the period of price maintenance to seventy two hours.

**Promotions in the off-sales trade**

SBPA endorses the Committee’s comments in clauses 65 to 70 and note that the Executive has proposed extending some of the categories of restricted promotions to the off trade also. However, we remain concerned that the proposals too prescriptive given that promotional activity is a legitimate tool for promoting new products, as distinct from
selling existing products more cheaply, especially where discounted drinks are sold with meals for example.

We would suggest that instead the Committee give Licensing Boards the legal powers to use existing industry best practice, like the British Beer and Pub Association’s Code of Practice on Drinks Promotions, to enforce standards in relation to drinks promotions, and to prohibit “irresponsible” drinks’ promotions, rather than adopting the prescriptive list approach as currently used in the wording of the Bill.

**Delivery of alcohol**

We note the Committee’s comments in clause 71, and have no comment to make.

**Advertising and labelling**

We note the Committee’s comments in clauses 72 and 73, and would highlight the fact that recent research by the BBPA suggests that “17 major British brewers will have unit labelling as standard on their beers by the end of 2005. As a result, 85 per cent of the beer sold in cans and bottles in the UK will be unit labelled. By this point, 84 per cent of bottles and cans will also carry a message encouraging people to drink responsibly.”

**Test purchasing of alcohol by persons under 18**

SBPA endorses the Committee’s comments in clause 74.

**Miscellaneous matters**

**Report of the Subordinate Legislation Committee**

We note the Committee’s comments in clause 75, and have no comment to make.

**Financial Memorandum**

We note the Committee’s comments in clauses 76 and 77, and would endorse the Committee’s concerns.

**Overall conclusions**

We note the Committee’s comments in clauses 78 and 80.
Note: (DT) signifies a decision taken at Decision Time.

Licensing (Scotland) Bill – Stage 1: The Deputy Minister for Finance and Public Service Reform (Tavish Scott) moved S2M-2776—That the Parliament agrees to the general principles of the Licensing (Scotland) Bill.

Bruce Crawford moved amendment S2M-2776.1 to motion S2M-2776—

Insert at end—

“but, in so doing, notes the concerns expressed by the Local Government and Transport Committee in its Stage 1 Report on the Bill that, in respect of the Financial Memorandum, it considered that more robust financial details were required and as a result the committee was not in a position to determine whether the Financial Memorandum was adequate.”

After debate, the amendment was disagreed to ((DT) by division: For 45, Against 64, Abstentions 7).

The motion was then agreed to (DT).
Licensing (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): The next item of business is a debate on motion S2M-2776, in the name of Tom McCabe, that the Parliament agrees to the general principles of the Licensing (Scotland) Bill, and one amendment to the motion.

14:36

The Deputy Minister for Finance and Public Service Reform (Tavish Scott): I begin by congratulating the new member on taking a place in this chamber. I notice that David Davidson arrived late, although I am sure that he was just waiting for Mr Brownlee to come in. I hope that Mr Brownlee will have many happy years in the Scottish Parliament—well, at least two; we shall see what happens after that.

Too many Scots are in denial about the impact of alcohol on our everyday lives and about the fact that our cultural dependence on drink is as advanced as it is. For too many Scots, drink is the lifeblood, the shield, the excuse.

It is this devolved Government’s responsibility to propose licensing law reform. In the 30 years since Scottish alcohol legislation was last changed, society has changed. As the problems and challenges have altered, the need for reform has arisen. We need reform that allows Scotland’s hospitality industry to invest and expand but which also allows us to control the misuse of alcohol and its unwelcome consequences for too many communities and local people. We need reform that can help to break the link between excessive drinking, binge drinking and crime.

Why, in Scotland—city and urban, rural and island—is the misuse of alcohol, getting drunk and getting drunk quickly, a growing issue, not a declining one? Today’s evidence is that we are drinking harder, earlier and quicker than ever before.

What should Government’s response be? Should we liberalise licensing laws, make alcohol more easily obtainable, endorse 24-hour drinking and encourage a continental, cafe society approach? Would that encourage more Scots, particularly young female Scots, to drink more responsibly? Given the national statistics on health, crime, the family and the social impact of alcohol, can we afford to test such a regime? The evidence suggests not. I will give just three illustrations of why that approach would not be right. We have rising levels of alcohol-related crime, an increasing amount of days lost at work through drink-related illness and higher levels of domestic violence, often involving children, caused by alcohol misuse at home.
Why is drinking—hard drinking, getting drunk—such a rite of passage for young Scots? Does alcohol break down one’s inhibitions with the opposite sex? Do we need the buzz of drink to combat an acute lack of self-confidence? Perhaps those observations are too sweeping and general and do not reflect the modern, progressive Scotland of the 21st century—then again, perhaps not.

Let me begin with the evidence in favour of reform, an enduring principle of this Parliament’s legislative process. The cost of alcohol misuse to the national health service in Scotland is £110.5 million per year. According to the 2000 Scottish crime survey, nearly three quarters of the assailants in violent crimes were reported by the victim to be under the influence of drink. Young Scots aged between 16 and 24 drink more than any other age group, and the majority of 13 and 15-year-olds have drunk alcohol.

That is the reality that we are absolutely committed to tackling. The Licensing (Scotland) Bill alone is not the answer. Legislation does not change culture, nor does it change attitudes. That is why ministers across portfolios—in the Health Department and in the Education Department—are working together on a plan for action on alcohol. However, the bill will contribute to our efforts to reduce underage drinking, tackle binge drinking and protect and involve communities and local people and it will reform an outdated system.

There is a strong consensus in favour of the bill, in favour of reform and in favour of action. I particularly want to mention the work done by the Nicholson committee, the Daniels working group and the expert reference group on licensing in building the evidence for reform. That consensus on the need for reform is also reflected in the Local Government and Transport Committee’s report.

Dr Sylvia Jackson (Stirling) (Lab): Given the developments down south, what are the minister’s plans for discussions with the United Kingdom Government?

Tavish Scott: Liquor licensing is very much a devolved matter. Although we are looking closely at what is being done in other parts of the United Kingdom, our approach—through the Nicholson committee, the Daniels working group and the expert reference group—has been to build the evidence for reform here in Scotland, based on the Scottish experience.

I am grateful to the Local Government and Transport Committee for the excellent work that it has done on the bill. It took evidence from a wide range of people and it has taken a sensible and thorough approach to the matter. It endorsed the general principles of the bill, and I am grateful for its recognition of and support for the proposed new licensing framework, the balance between national and local controls, the single premises licence, the end of permitted hours and the right for any person to object to a licence application.

The committee made a series of recommendations, and I will respond to them this afternoon. First, it recommended that the proposed size and quorum of the licensing boards and the size of the proposed local forums should be increased. We are not persuaded that the maximum size of 10 for the boards should be increased. Councillors sit on licensing boards as part of a quasi-judicial tribunal, taking decisions based on detailed information from the clerk to the board, from objectors, from the police and, under the new system, from licensing standards officers. They will be fully equipped to take decisions using that wide range of information. We do not agree that increasing the size of boards would improve the decision-making process. However, we are happy to change the proposed quorum for boards. We will introduce amendments at stage 2 to allow a quorum of half the board’s membership.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The committee expressed concern that the role, function and salary of licensing standards officers are opaque. Will the Executive tell us how many officers there should be, what the total cost will be and who will pay?

Tavish Scott: I know that Mr Ewing followed closely the deliberations of the Local Government and Transport Committee and the evidence that I and Scottish Executive officials gave, so I am sure he is aware that those matters will be considered carefully by the national licensing forum. That is why it will be set up. We are aware of the cost issues, and those will be taken forward. I also assure Mr Ewing that, as he would expect, we will bring those matters back to the Parliament, which will be able properly to scrutinise them. There will be plenty of opportunities for him to scrutinise them, too.

We acknowledge the committee’s concern that some local forums may need more than 10 members. We intend to lodge amendments at stage 2 to increase the maximum number of members to 15, with a new regulatory power to amend that later if required.

The committee also raised concerns about the restriction of the police’s role in new applications to the reporting of convictions for relevant offences. The police will, of course, continue to play a full part in the review of licences and they will be able to initiate a review at any time. However, we are prepared to consider further the role of the police in relation to applications for premises licences.
Police evidence to the committee suggested that we should reconsider allowing licensing standards officers to enter unlicensed premises. The Association of Chief Police Officers in Scotland stressed the potential for licensing standards officers to become involved in dangerous situations that would be best left to trained police officers. I confirm that I am happy to lodge suitable amendments at stage 2 to deal with that issue.

The committee asked us to reconsider some issues for which there are no immediate answers. We will reconsider licensing arrangements for ferries and entertainment vehicles and home deliveries of alcohol, including dial-a-drink services. Those are particularly complex issues and we need more time to work through them.

A key concern in the committee’s report is that the bill’s proposed controls on irresponsible promotions do not extend to the off-sales sector. Most of the evidence that the committee took supported the extension of controls to off-sales promotions. We have discussed the matter further with the off-sales trade and Alcohol Focus Scotland and we considered the evidence on underage drinking, consumption trends and the misuse of alcohol. We also considered the committee’s view that some controls could be imposed now on the basis of existing evidence.

In recognition of that consensus, we have decided that a modified version of the controls should be extended to off-sales. We therefore propose to amend the bill at stage 2 to deliver a ban on some promotions in off-sales premises. We wish to ensure that the extension covers promotions that relate to an alcoholic drink that is targeted at people who are under 18; that are based on the strength of any alcohol; that reward or encourage, or seek to reward or encourage, drinking alcohol quickly; and that offer alcohol as a reward or prize, unless the alcohol is in a sealed container and is to be consumed off the premises.

We also propose to amend the condition in the bill that requires on-sales premises to implement a non-differential pricing policy for 48 hours. We will extend the period to 72 hours, as recommended in some of the evidence that the committee heard. We intend to impose the non-differential pricing policy on the on-sales and off-sales sectors.

I announce progress on establishing the national licensing forum. Forum members have been appointed and the first meeting is to take place on Monday 4 July. The forum is built around the individual expertise that it needs to enable it to perform a specific role in its first two years, which will focus on training, licensing standards officers and overprovision. I am grateful to the highly experienced individuals who have agreed to offer their time to that important work and I look forward to working with them.

The bill adopts a balanced approach that was achieved after an open consultative process and considerable work. It balances the need for national consistency with local flexibility and the need to recognise and support Scotland’s vibrant and innovative hospitality sector with the stark reality that we live in a hard-drinking culture that puts an enormous strain on public resources. It recognises that most Scots drink responsibly but, for those who do not, we must take action.

The Government cannot change Scotland’s hard-drinking culture—people can. However, the Government can recognise what must be done. Licensing law reform is one part of that equation. The bill is not about liberalisation or deregulation and it will not allow 24-hour drinking. There is no evidence that such an approach would work.

The liquor licensing reforms go hand in hand with sustained long-term action on education about alcohol and health promotion. Because the measures are sustained, are for the long term and are reforming, I commend the bill to Parliament.

I move,

That the Parliament agrees to the general principles of the Licensing (Scotland) Bill.

14:47

Bruce Crawford (Mid Scotland and Fife) (SNP): I welcome Derek Brownlee to the Parliament. Not only policemen out there, but—unusually—members of the Parliament, are getting younger. I hope that he enjoys his time here.

I begin my discussion of the bill with praise for my colleagues on the Local Government and Transport Committee. The committee’s pragmatic and sometimes challenging approach to its stage 1 report meant that it not only described well the bill’s strengths but—crucially—examined the bill’s weaknesses and provided potential solutions. I am glad that the minister, in what might be one of his last speeches on his current portfolio, responded to some of that positively.

I am also glad that the committee broadly welcomed and endorsed the bill’s general principles. However, in welcoming the bill, we should not kid ourselves on that it will produce a cure-all for the alcohol abuse that—unfortunately—exists in Scotland. The bill can have an impact on underage drinking and binge drinking but, to tackle the underlying causes of alcohol abuse, we will need to foster a significant change in our culture, as the minister said.

Legislation on its own never has led and never will lead to a change in culture. It can help to usher in an improved framework and an environment that can set the right tone but, as the minister said, a much more significant initiative on public health
and a prolonged public awareness programme, perhaps over several generations, will be needed to change how Scotland sees its use of alcohol.

Even then, given the diversity of influences on our modern society, it will be difficult, in this age of global communication, for Governments to have an impact on their populations in the ways in which they might have in the past. A bevvy culture afflicts Scottish society and that must change. Individuals must look to themselves, and Scotland as a society must examine itself, if we are to alter behaviour. We acknowledge that the bill is important and will help to improve Scotland’s licensing law, but I hope that we do not raise the bar too high for what we expect it to deliver.

The national licensing forum, to which the minister referred, will be central in the plans to modernise Scotland’s licensing laws, especially given the intention that it will act as the minister’s group of expert advisers. As the forum will play a central and crucial role in helping to shape future licensing policy through the advice that it provides to ministers, its proposed make-up and specific role is an issue in which the Local Government and Transport Committee will rightly take an interest. Therefore, I am glad that the minister has confirmed that he intends to keep the committee informed about progress on that during the summer. That is helpful.

The role that the national licensing forum will play will be essential in winning over those who have expressed doubts about putting too much power into the hands of local licensing boards. Although it is right that licensing boards should be able to shape and decide policy based on local circumstances, it is also right that good guidance and advice will come from the centre to help to deliver a reasonable degree of consistency and equity of approach throughout Scotland.

Understandably, considerable concern was expressed about the potential increase in costs that might need to be borne by licensed business, especially given that the costs of operating the new regime are to be contained within a self-funding framework. The last thing that any business in Scotland needs is for costs that are not within its control to increase to a level that was not planned for and which cannot be absorbed. That is why the committee was right to call on the Executive to examine closely how we can keep to an absolute minimum any additional financial burdens that might be placed on the licensed trade, especially the costs of the licensing standards officers and the one-off start-up costs that will be associated with the new regime. That is also why the committee recommended that consideration should be given to introducing a variable fee scheme to take account of the different types and sizes of premises.

Many licensed premises that are at the margins of what might be considered a successful business are the very establishments that might have the most difficulty in adapting successfully to the proposed new licensing regime. That is one reason why the committee also asked the Executive to consider introducing an interim licence of up to three years. I will be interested to hear the minister’s comments on that idea when he sums up. In my view, such a licence would recognise the fact that some long-standing businesses will experience difficulty in adapting their premises to comply with modern building standards. Some will need time to gather together the investment. If they are to get up to today’s expectations, they will need time to support the investment levels that are required. However, the committee was right to recognise that premises that fall below expected standards cannot simply expect to continue regardless.

Similarly, we cannot allow the practice of irresponsible drinks promotions to continue unfettered. It is right that the bill seeks to control the periods during which promotions can be made available in the on-licence sector. I am glad that the committee was able to challenge the Executive over its failure—until today—to examine how irresponsible promotions in the off-licence sector might best be improved. I am happy at what the minister had to say about that, but I will be interested to see what the stage 2 amendments actually say when they are lodged.

However, we could have done more. This Parliament does not have control over issues such as advertising and labelling. Ironically, legislative competence still lies at Westminster—I think that is what Sylvia Jackson was referring to earlier—for powers that could have a much greater impact on Scotland’s drinking culture than the powers that are currently available to us. I am glad again that the committee accepted that point in its report.

The committee also expressed its disappointment about the level and extent of the enabling powers that are provided for in the bill. It is not helpful for the Executive to take so many enabling powers in the context of producing legislation that could have been both robust and well constructed had it been subjected to fuller parliamentary scrutiny by the committee and during the stage 1 debate before the full Parliament.

In conclusion, I say for the record that the Scottish National Party will support the bill at stage 1, but we believe that the Executive still has a bit to go to produce a bill that will deliver on expectations. There are many areas on which the committee reflected but which have still not been addressed by the minister.
In particular, the minister needs to take
cognisance of the committee’s criticisms of the
lack of robust financial information and of the
rather sketchy nature of the information that was
provided. As the committee pointed out, details of
the fee regime have not been developed
sufficiently.

Tavish Scott: Mr Crawford is aware that a fees
review is under way. That was flagged up well in
advance and the committee was aware of it.
Surely he is not suggesting that we cancel the
fees review.

Bruce Crawford: No. The committee was
saying that it would have preferred to have the
information earlier, so that it could make decisions
on that basis. If the committee had had the
information, it would not have made the criticisms
to which I have referred.

The costs of employing LSOs have been all but
impossible to calculate, especially given that the
number of LSOs is anything between 32 and 66
and that their salaries range between £15,000 and
£30,000. Those are marked levels of potential
variation. On that information alone, the costs of
employing LSOs range from £480,000 at the low
end to £1.98 million at the high end. The
committee reflected on that point clearly in its
report. That is why I ask the Parliament today to
endorse the committee’s position by supporting
my reasoned amendment at decision time.

I move amendment S2M-2276.1, to insert at
end:

“but, in so doing, notes the concerns expressed by the
Local Government and Transport Committee in its Stage 1
Report on the Bill that, in respect of the Financial
Memorandum, it considered that more robust financial
details were required and as a result the committee was not
in a position to determine whether the Financial
Memorandum was adequate.”

14:56

Mr David Davidson (North East Scotland)
(Con): I welcome my colleague Derek Brownlee to
the chamber and wish him a happy and contented
time here—if that is possible in opposition.

I congratulate my colleagues on the Local
Government and Transport Committee on a
thorough piece of work that was well done. The
questioning of witnesses was very good.

I believe that the reform of our licensing system
is long overdue. However, like other members, I
am deeply concerned about the fact that ministers
have chosen to provide for enabling powers,
instead of exposing the regulations in advance for
real scrutiny by the chamber and the Local
Government and Transport Committee. I also
have concerns about the costs to the trade, which
I think have been underestimated in the production
of the bill. I would like the minister to provide more
clarification of what the trade will have to expect
and what form of fees there will be, because that
is a matter of extreme concern.

The minister spoke about the problems
associated with alcohol. Some 225,000 Scots are
labelled as problem drinkers, but there are others
who are not known about.

At the beginning of the bill process, Sheriff
Principal Nicholson stated:

“we foresee a simple, streamlined licensing system that
accepts that the law-abiding majority of Scots drink
sensibly, and therefore should be as free from restrictions
as possible”.

The Conservatives support those comments. We
welcome the modernisation of the licensing
scheme and the simplification of many parts of it.
We called for that in our manifesto for the 1999
Scottish Parliament elections. However, we have
given notice to the committee—and I give notice to
the Executive—that we will lodge amendments at
stage 2.

Underage drinking is an issue. Unfortunately,
when we ask where young people get the alcohol,
the word “off-licence” springs to mind. In the past, I
have called in the chamber for a national proof-of-
age card. When Mary Mulligan was the Deputy
Minister for Health and Community Care, she
welcomed that proposal, but there has not been
much action. I hope that the minister will take on
board a previous minister’s comments.

The bill does not deal properly with the problems
that arise from the off-sales sector. I welcome the
comments that the minister made, and we look
forward to hearing what he has to say in detail, but
consideration needs to be given to the promotions
system and the new problem of what is called front
loading, which involves young people stocking up
and drinking a lot before going out so that they do
not spend money on controlled premises. Off-
sales premises are not a managed environment
and front loading causes problems out on the
streets.

I would also like to hear what the minister has to
say about personal licences. Unless there is full
training, which he hinted would be available, there
is not much point to them. We need a national
registration scheme, so that we can identify easily
who holds such licences. The register does not
need to be expensive and could be attached to the
driving licence database, for example.

Premises licences are based very much on
business plans. I hope that they will be seen to be
robust but flexible and that licensees will have an
opportunity to cater for the needs of the
community that they seek to serve. We would like
closing times to be staggered, so that everyone
does not pour out on to the streets at the same
time because a clock has ticked past a certain hour.

The minister made some comments about boards. We believe that there must be good local knowledge on a board. I welcome the proposal to increase the quorum, because in large cities such as Glasgow just a few people have far too much power.

As Bruce Crawford asked, who will employ the licensing standards officers? Will they work for the council, the board or for somebody else? What powers will they have and what will they cost? We need clarity about that.

We are disappointed by the apparent cutting back of the police’s role. I am not reassured by what the minister has said so far, although perhaps he will do something further. We are also concerned about excluded premises in rural areas where often the only shop for miles happens to have a few petrol pumps outside. There is a concern about how we cover that issue.

I hope that the lack of appeals process for personal licence holders will be addressed at stage 2. There must also be flexibility in the granting of occasional licence extensions, because the planning of some sporting events, for example, means that such licences are required at short notice.

Boards should have some flexibility to use their local knowledge when dealing with overprovision. We do not want a centrally controlled system where one size fits all. We need community input and we need local, responsible people to sit on the boards to make those decisions.

As the committee heard in evidence, there is a perception that the bill will give rise to protectionism, with people saying, “We mustn’t have any more new licences, because—” However, the “because”s are not always for the right reason. Different elements of the trade do not want competition, but competition improves service and raises standards. In considering grandfather rights, we have to recognise that people have made an investment in a business. However, we also have to ensure that there is opportunity for new businesses in the marketplace.

On the transitional arrangements, I welcome the fact that the committee pushed to extend the time allowed to upgrade premises to three years. I hope that some provision will be made for listed buildings, of which people cannot change the interior layout or the structure. We need some discretion over that.

On the sports ground issue, it is obvious that, because of the lack of opportunity for licences, the likes of Murrayfield have lost out on hosting very large events, which might bring in £20 million a time. The police in Newcastle are happy with the scheme that operates at St James’ Park, because they believe that it removes the problem of people coming drunk to the football ground. People can enjoy themselves at a sporting occasion and, as we see every time there is a rugby match at Twickenham, the situation does not get out of control. The police are in favour of that. I hope that ministers will abandon the idea of having a blanket ban on sports grounds and leave such decisions to local knowledge and discretion.

Bruce Crawford: Does the member believe that the bill contains the powers to enable that to happen?

Mr Davidson: Unfortunately not, which is why I was appealing to the minister. I thank the member for clarifying the matter for me.

There are good reasons to have a differential pricing policy where it can be seen to benefit public health and law and order, but there are difficulties with those provisions in the bill and I cannot support them—they are far too rigid, as I said when the committee considered the matter. What about the little promotions in which pensioners can have a nip and a pint in the middle of the afternoon? The proposed price list maintenance time of 72 hours—

Tavish Scott: If the Conservative party position is not to support our policy on tackling binge drinking, what is its approach to the problem?

Mr Davidson: I am talking about pensioners, who have neither the physical ability nor the cash to be part of that problem. We are saying that we need some flexibility so that responsible retailers can hold promotions that are within the spirit of the bill and that support the Nicholson principles of measured, controlled drinking. We must allow people some freedom.

We want to change the drinking culture to a family-friendly, continental, Mediterranean-style one in which people are educated in the family to be a bit more responsible in their drinking. As the minister said, legislation is not the only answer; there has to be education, too. More important, there must be a culture change. Regulations cannot deliver that.

The majority of people in Scotland are responsible and they should not be penalised by the action of the few. Equally, we must ensure that the police are given the power to deal with unruly behaviour. On law and order, I am concerned that people who become bouncers and doormen should be properly trained and that they should not resort to using unnecessary violence, as evidence shows happens.
The Conservatives support the general principles of the bill, but we will be lodging amendments at stage 2 to make it a much more practical arrangement for Scotland.

15:05

Bristow Muldoon (Livingston) (Lab): I will address some of the main points in the Local Government and Transport Committee’s report, although, given the time constraints, I will not be able to cover all the important matters that the committee raised—I hope that my colleagues will be able to cover the issues that I cannot.

I welcome the fact that, in his speech, the minister responded to a significant number of the points that the committee raised in its report. There are other areas in which we look for further clarification, but today was a good start in terms of the Executive’s response to the report. The committee welcomed the bill and endorsed the Executive’s objectives to simplify and modernise the legislation; to balance the rights of the majority who drink responsibly with the need to protect communities from the nuisance and crime associated with alcohol; to provide strong monitoring and enforcement; to make the system more inclusive; to support responsible members of the licensed trade; and to allow local flexibility. The bill also provides an opportunity to reduce alcohol-related health problems in Scotland.

On the idea of a new type of licence in Scotland, we should recognise that there has been a significant growth in the number of licences over the past 30 years or so, as well as a change in the type of licensed premises. There are 15 per cent more pubs than there were 25 years ago and there are 25 per cent more off-sales. Moreover, there has been a 400 per cent increase in the number of entertainment licences.

Before I address the many problems associated with alcohol, I stress the importance of recognising that, consumed responsibly, alcohol can be an enjoyable part of many people’s social lives. Through the provision of restaurants, pubs and clubs, the licensed and hospitality trade is an essential part of Scotland’s economy. The production of alcohol, particularly whisky, is a major provider of employment and export income to Scotland. On the downside, alcohol is related to some serious social problems, ranging from homicide and deaths due to drink driving to assaults and much of the antisocial behaviour that afflicts many of our communities. The bill can contribute to addressing those issues. Like other members, including Bruce Crawford, I recognise that legislation alone will not resolve all those social problems or the health problems associated with alcohol. Due to lack of time, I do not intend to cover the health issues in great detail, but I know that my colleague Mary Mulligan will do so.

On the specifics of the report, the committee believes that local knowledge and expertise is essential in taking local licensing decisions. We consider that the most effective way of taking such decisions is through elected local councillors, although we recognise that councillors are acting in a quasi-judicial manner on licensing boards. The city of Glasgow licensing board and the city of Edinburgh licensing board called for an increase in the maximum size of the boards. That proposal was supported by Sheriff Principal Nicholson. I welcome what the minister has said on raising the quorum, but I urge him to consider further the size of boards and whether a membership of 10 is sufficient.

The committee felt that the proposed licensing standards officers could play an important role in the licensing process, especially in enforcement and the monitoring of licensing conditions. However, we were concerned about the precise nature of that role, on which we seek further information—we would like to know more about the powers and functions that the licensing standards officers will be expected to undertake. The minister mentioned the concerns of the police in that regard. If I had had more time, I would have said more about the powers and role of the police, but I understand that my colleague Paul Martin will be covering the issue in more detail.

The national and local forums have an important role to play. The national forum will have an essential role to play in providing a framework for the licensing system in Scotland and the local forums will give communities that host licensed premises a greater opportunity to have an impact on the decisions that the licensing boards make. I welcome the fact that the boards will have to give local licensing forums reasons for their decisions if they disagree with the position that the forums have encouraged them to take. I also welcome the minister’s indication that the membership of local licensing forums will be increased to 15, which will enable a broader range of representation.

Given that I am running short of time, I turn finally to the issue of irresponsible promotions. The minister has indicated that there will be positive movement in response to the committee’s comments.

The Deputy Presiding Officer (Trish Godman): Mr Muldoon, you have as much time as you want.

Bristow Muldoon: I have been misled about how much time was available, Presiding Officer. As I have more time than I thought I had, I shall continue a little further.

On differential pricing policies, I welcome the minister’s indication that he is prepared to extend to 72 hours the time during which premises will
have to maintain a price. That reflects many of the representations that were made to the committee. With regard to the off-sales trade, the minister has responded positively to a couple of the points that the committee made about irresponsible drinks promotions, particularly of drinks with a high alcohol content and those targeted at young people.

Bruce Crawford: I do not know how much time Bristow Muldoon has left, but I hope that, in that time, he will reflect on what the committee said about the financial memorandum. It said:

“more robust financial details are required and as it stands the Committee is not able to determine whether the Financial Memorandum is adequate.”

Does he agree that members of the committee might find that that is close to the reasoned amendment that I have moved and does he believe that they will support my position?

Bristow Muldoon: I can respond to that point right now. I accept the committee’s position and the criticisms that were made of the financial memorandum. At this stage, however, we are not voting on the detail of the financial memorandum. We are voting today on the general principles of the bill. I support the bill’s aims and general principles, so I shall be voting for the motion in the name of the minister. It is unfortunate that Scottish National Party members have chosen to try to create division where little division exists. There has been a welcome degree of agreement among all political parties and, indeed, much of the licensed trade on the contents of the bill. I thought that this debate would be one of the occasions on which the Parliament comes together to endorse the general principles of a bill, so I find the SNP’s approach disappointing.

We made recommendations on advertising and labelling, but we did not, as Bruce Crawford almost implied, regard independence as the solution to those problems. Labelling of products is probably a broader issue than can be dealt with by individual nation states. We are members of the European Union and many of the alcoholic products that are on sale in Scotland are produced by other member states. If we were to make statutory provision on labelling, we would need to do so in the context of EU law; the best way of making effective progress on the matter would probably be across the whole of the EU. However, irrespective of that, I want to put on record the fact that we recognise the good practice of retailers such as the Co-operative Group in putting more informative labelling on their own-brand products.

I welcomed the information that was recently provided to us by the British Beer and Pub Association, which showed that, by the end of this year, 85 per cent of beer sold in bottles and cans will carry information on the number of units of alcohol in the bottle or can and messages to encourage responsible drinking. In addition to legislation, responsible activity by those involved in the licensed trade and the brewing trade can only help in achieving the Executive’s aims.

Finally, the committee has raised the issue of test purchasing in order to try to ensure that the sale of alcohol to minors is more effectively controlled than is currently the case. Although we welcome the move towards a more robust proof-of-age scheme, my view remains that we should try to resolve some of the difficulties that the police face in utilising test purchasing. I look forward to the minister raising the issue with the Lord Advocate and I hope that the Lord Advocate will respond positively.

A broad consensus among the political parties and the key stakeholders in the industry underpins the modernisation of the system. On that basis, I encourage all members of the Parliament, in all parties, to unite behind the motion in the minister’s name and to agree that the general principles of the Licensing (Scotland) Bill be approved.

15:15

Margaret Smith (Edinburgh West) (LD): On behalf of the Liberal Democrats, I welcome Derek Brownlee to his new position and wish him well in his new role. I hope that he will get support from members throughout the chamber, particularly in his first few weeks, when—like the rest of us when we first came to the building—he will probably lose his way several times.

I welcome the opportunity to speak in the debate. The Liberal Democrats support the bill, which represents a chance to introduce a licensing regime that is fit for the 21st century. The bill, which follows on from the excellent work that was done by the Nicholson and the Daniels committees, has attracted widespread support and it contains many proposals that we can all welcome. However, as Bristow Muldoon said, we do not have time to look at all the proposals today.

The bill provides for no-proof, no-sale measures; greater community involvement through licensing forums; a presumption against 24-hour opening; and a greater emphasis on training for all staff. In short, the bill includes a range of proposals that will revolutionise our licensing laws and, I hope, play a part in changing our drinking culture. Alcohol consumption is a crucial issue for the Parliament and it is clear that we need to change our culture—Executive figures suggest that alcohol cost Scotland £1.1 billion in 2002-03, if we take into account a wide range of impacts covering health, criminal justice and social issues.

Alcohol is associated with one in 30 of all deaths in Scotland. One in six deaths on our roads is
caused by drunk drivers and almost two thirds of victims of assault thought that their assailant was under the influence of alcohol at the time of the offence. However, we are regulating a legal drug and, in so doing, we come up against not only legal issues but cultural ones. The Executive rightly acknowledges that statute is only part of the picture and part of the solution in achieving the objectives of preventing crime and disorder, securing public safety, preventing public nuisance, protecting and improving public health and protecting children from harm.

We welcome the simplification of the licensing process through the abolition of the outdated system in which there were seven types of licence. The bill will introduce just two types: the personal licence and the premise licence. The new system will take a case-by-case approach that will be backed up by an operating plan approved by the licensing board, which consists of elected councillors. We feel that that system is better equipped to deal with the hybrid quality of many of our licensed premises these days, particularly in cities such as Edinburgh and Glasgow.

It is right formally to move away from permitted hours, particularly when, as the Scottish Beer and Pub Association tells us, 91 per cent of pubs and 88 per cent of hotels already have regular extensions to their hours.

We welcome many of the provisions to improve public involvement and consultation in the licensing process. Although some of those who gave evidence to the committee opposed those provisions, I certainly support the right of any person to object to a licensing application. I welcome the minister’s comments about raising the quorum in licensing boards, but I believe that, for cities such as Edinburgh, the argument remains strong for having a greater number of people on the board.

The committee supports the proposal for local licensing forums and, crucially, for the national licensing forum, although we have concerns about the amount of detail that still needs to be fleshed out in relation to the forums’ role. I certainly welcome plans to review progress after a couple of years.

The minister knows well that I have had real concerns about what is certainly perceived as a reduced role generally for the police and chief constables in the system of new applications. As a former member of the Edinburgh licensing board, I can only say that, in practice, I found the details that the police gave us about licence holders’ convictions and about the functioning of their premises to be very useful. That contribution is of value in respect of both renewals and new applications. I am pleased that the minister said that he has had discussions with ACPOS and will return to the issue at stage 2 proactively. The police will play a crucial role in improving the licensing regime as they work alongside the new LSOs and licence holders.

The bill presents us with an opportunity to improve the facilities and services that are available on licensed premises, which is why I support the proposal that there should be no automatic transfer of licences. A reappraisal should take place to ensure that everyone complies with the new requirements and can play their part in raising standards for locals and tourists. It is only fair that we do not set up a two-tier system, but we must ensure that there is a reasonable period of transition, as members have said.

It is also fair and necessary that we apply the same vigour to stamping out irresponsible drinks promotions in the off-sales sector as we apply to stamping them out in the on-sales sector. I welcome the minister’s assurances that the Executive will lodge amendments at stage 2, as I suggested.

Pauline McNeill (Glasgow Kelvin) (Lab): What will happen in the period of transition that the member mentioned? Will there be winners and losers, who will have to get used to the new arrangements?

Margaret Smith: Some representatives of the trade argued for the automatic transfer of rights and licences to people who hold a licence under the current system. Committee members thought that that approach would be wrong and would create a two-tier system. We want the bill to raise standards, so we thought that a fairer approach would be to give people in the trade a fair interim period, perhaps by awarding them a three-year interim licence, during which they would have a chance to undertake work and take on board the changes in the regime. Such an approach would enable us to improve standards and is fair and positive.

We know from our experiences in our constituencies that many of the worst examples of antisocial behaviour take place around off-licences. Barnardo’s tells us that most young people get their alcohol from local off-licences. Executive figures indicate that 11 per cent of 15-year-olds report that they buy alcohol from pubs, 7 per cent report that they buy alcohol from supermarkets and a staggering 24 per cent—no doubt they are literally staggering—buy alcohol from local shops and off-licences.

I accept that, as representatives of the trade and others argue, we might not be able to introduce the same restrictions for the off-sales sector as we can do for the on-trade sector in relation to immediate consumption and I accept that the bill
gives ministers the power to make orders to deal with the matter, but it is crucial that we tackle immediately an overwhelming problem that our communities face, by including in the bill whatever measures we can to restrict the sale of certain products, as the minister said. I particularly welcome the proposed restrictions on products that are aimed at young people and on products that are promoted because of their alcoholic strength. It is also right that we do all that we can to tackle irresponsible promotions such as happy hours, which encourage binge drinking and have a devastating impact on the criminal justice and health systems.

Someone who is more cynical than I am might think that David Davidson’s opposition to those measures demonstrates that the Conservatives are more concerned about business than they are about public health. I am shocked and disappointed that there is a difference of opinion in the Parliament over the issue. The Executive is taking a reasonable approach to tackling what our local police and accident and emergency staff regard as a major problem.

I welcome the bill’s approach to overprovision and the proposal to require pubs to opt in if they want young children to be allowed on the premises. I also welcome the minister’s comments today, but there remains a lack of detail in many areas and I hope that we will return to those issues at stage 2.

I am disappointed that the SNP has lodged an amendment to the motion. Bruce Crawford must have thought that he was on a roll after the committee accepted his suggestions because we wanted to take a consensual approach in our report on the bill. However, he overstepped the mark when he lodged the amendment. I am content to do what we need to do at stage 1, which is to agree to the general principles of the bill. I think that the majority of members will do that, as it is the right thing to do.

15:24

Paul Martin (Glasgow Springburn) (Lab): I, too, welcome Derek Brownlee to the Parliament. I give him one warning: he should not allow his party leader to recruit him to the parliamentary golf team, which was soundly beaten 8-0 on Saturday. Derek Brownlee should stay away from the team if he can.

Like others, I think that we should welcome the bill. All too often, we are accused of not reflecting public opinion. This is a serious piece of legislation, which was launched in 2001. It has been long in coming to the Parliament, but it will genuinely make a difference not just in changing how we sell alcohol but in dealing with the most appalling statistics, which have been the subject of great debate in the Parliament on a number of occasions. We do not always take direct action to deal with the appalling statistics that exist in my constituency and in many other parts of Scotland, but in this case, as well as talking about what we have got to do, we are taking direct action.

Bruce Crawford is being slightly disingenuous on the requirement for clarity. The committee sought further clarity, but that was no different from any other stage 1 report that has been produced in the Parliament. If there was absolute clarity, I would be concerned that the minister was not willing to show any flexibility in allowing the committee to develop what the licensing standards officers should be doing. An important part of the Parliament’s work will be to develop what those officers should do. I am not here to decide what salary they should get; that issue should be developed by the civil servants. However, we should subject it to effective scrutiny.

A couple of issues, which are out there in the public domain, were the subject of great debate during the committee’s evidence sessions in Glasgow and in other parts of Scotland. The first of those issues is the current police reporting mechanisms. I welcome the commitment that we will develop the police reporting role with ACPOS; however, crucial to those discussions will be our ensuring that there is absolute continuity and continued clarity with regard to how the police officers will report to the licensing committees. All too often, I hear of communities attending the licensing board or committee to be advised by the police authorities that there is nothing to report, although that has not been the local experience of the premises. There must be a standard format whereby all activities that take place in a certain premises are reported to ensure that the police report does not just say whether an offence has been detected, but creates a profile of a local facility in a community. I would welcome a commitment from the minister that whatever is developed will be developed effectively.

Another issue on which we received evidence, particularly in Glasgow, was the concern of communities about the pressures that they faced as a result of nightclubs. We heard about not only the pressures that nightclubs put on communities, but the pressures that they put on police authorities and council services. I do not believe that the tab should be picked up by the council tax payer, or by the taxpayer in the case of the police authorities; I think that the tab should be picked up by the nightclub facility or any other licensed premises that brings that additional pressure to a community. Will the minister ensure that the legislation will enable authorities to serve a levy on a nightclub or any other licensed premises that creates an additional requirement for services? All
too often, communities have been attacked as a result of the activities that take place and I do not see why they should pick up the tab for that. The committee received powerful evidence on that in its Glasgow session.

The issue of family-friendly premises was raised during evidence taking, particularly in the evidence that we received from Niall Stuart of the Federation of Small Businesses. I have been encouraged by the condition of a number of family-friendly premises throughout Scotland, which have developed their services very well. Niall Stuart said:

“From a practical point of view, a baby can be changed without the availability of baby changing facilities.”—[Official Report, Local Government and Transport Committee, 3 May 2005; c 2456.]

If I had heard that before I became a father 15 months ago, I would have said that it was a possibility. However, I can now tell Niall Stuart that that is not the case. If we are to encourage a family-friendly environment, we must have a charter that delivers a basic standard. It was crass of Niall Stuart to suggest that that can be done in any other way. If we are to bring families into the licensed environment, that must be done responsibly and with commitment. I do not welcome Niall Stuart’s statement. However, I must say again that licensed premises throughout Scotland have moved in the right direction on the issue.

On the ACPOS proposal for a database of licence holders, I was surprised that we did not already have a database to collect information on licence holders. It is a serious concern that no such database is in place. A number of opportunities in relation to databases that already exist in the justice system have been talked about, but we should ensure that there is a national database that allows information to be shared. I ask the minister to ensure that funding is made available at least to develop the opportunities.

I welcome the bill, subject to changes at stage 2. We can deliver legislation that will make a difference to communities throughout Scotland and will tackle the appalling health statistics in many parts of Scotland.

15:31

**Brian Adam (Aberdeen North) (SNP):** The Deputy Minister for Finance and Public Service Reform set us some interesting challenges as he opened the debate—indeed, the issue is a challenging one. Bristow Muldoon and Margaret Smith criticised members because the Parliament is not taking a unanimous view on the bill, but I have not heard a unanimous view even among members of the Executive parties. Paul Martin rightly pointed out a number of issues on which the bill does not go far enough and he looked forward to making changes at stage 2. On some of those changes, he will certainly have my support, if not necessarily the support of his colleagues.

**Bristow Muldoon:** Mr Adam misunderstands me. I, too, mentioned issues on which the bill can be improved. Every bill that comes before the Parliament can be improved, but the question that should be before us today is whether we believe in the bill’s general principles. As the vast majority of members believe in the general principles, we should all say so together.

**Brian Adam:** The slight problem with that is that bills normally come with a financial resolution. We may debate how robust such resolutions are, but we are missing one today. The point that my colleague Bruce Crawford makes in his amendment is well made and was also made by the Local Government and Transport Committee.

**Tavish Scott:** It is important that Brian Adam does not say that the Executive did not produce a financial resolution. The Parliament decided that it did not want one. We took advice from the Parliament on whether a financial resolution was necessary and the advice from the Presiding Officer’s office was that we did not need such a resolution. We offered to have a financial resolution, but the Parliament decided that we did not need one. I hope that Mr Adam is clear about that.

**Brian Adam:** I must accept the minister’s assurance that he was given advice on the matter, but it seems to me that the advice was fairly ill considered, given that the bill will have significant financial implications, not the least of which relate to the LSOs and the points that Mr Martin raised.

I move to the issues on which I want to focus. I, too, want to be a little more contentious than some members might like me to be. Some people suggest that health promotions are a good thing. I agree with that, but I do not necessarily agree that measures that relate to drinks promotions are a good thing, whether they are for happy hours or something else. The bill does not deal with the impact of alcohol on health. David Davidson rightly pointed out the scale of the present problem. Members who espouse the continental style of drinking ignore the fact that, in parts of the continent where total drinking is higher than it is here—the proportion of such places is becoming smaller—the health problems that are associated with alcohol are greater. The issue is about not just binge drinking or youth disorder, but the total health impact of increased alcohol consumption. If we cannot persuade society that it is not necessarily a good thing to drink in excess over either a short or a long period, we will guarantee that there will be even more health problems in the
future. As a result, I think that this is a question not of responsible drinking but of the amount that individuals consume.

Margaret Smith: I hope that the member agrees that the licensing system is the wrong place to look if we want to educate or re-educate people with regard to some of the issues that he has raised. Instead, we need a holistic approach that includes, for example, early intervention programmes in our schools to ensure that children and young people learn about drink in a responsible way and in a way that allows them to take a whole-life view of it. We should not address the matter simply by trying to stop them going into the local offie.

Brian Adam: I agree that we need to address the matter in as broad and as responsible a way as possible. However, I do not accept that having drinks promotions represents a responsible approach. The significant increase in the amount of drink that is consumed has been accompanied not just by the usual drunkenness and disorderly conduct that have an impact but by real health problems. The amount of money that is spent on health promotions on drinking, either in the field of education or by organisations such as Alcohol Focus that pick up casualties in the system, pales into insignificance when compared with the drinks industry’s drinks promotion budgets and the support that the Scottish Executive and health authorities give—rightly, in my view—to tackling illicit drugs problems. We have not struck the right balance in that respect and we need to offer general help.

We must create a situation in which people are encouraged to drink less, not more. I realise that the drinks industry does not wish to hear that message. I have no problem with competition between drinks companies, but I do not want them to increase their market share or drinkers’ overall consumption, because we will all pay for that.

On enforcement, concerns have been expressed that the roles of LSOs are ill defined. Paul Martin rightly referred to paragraph 36 of the report, which deals with “Investment in areas surrounding licensed premises”.

I share his view that the drinks industry should not escape the consequences of its consumers’ actions. In the same way that we expect polluters to pay, those who sell the drink that leads to individuals’ drunken actions ought to bear some responsibility for, and the costs associated with, that behaviour. I realise that it is not easy to tackle that problem or to apportion those costs. However, it is not right that there are fewer police in the communities that I represent, and in the peripheral and private housing estates on the edges of Aberdeen, because they are all in the city centre dealing with overnight rowdiness. Moreover, I do not believe that business rates represent adequate compensation in that respect. However, I am happy to accept that the view that Mr Martin and I have expressed is not universally held. I hope that other members who share it will be able to persuade the minister of our argument between now and the debate’s conclusion.

Paragraphs 72 and 73 of the report refer to advertising and labelling, which—as the report rightly points out—are reserved matters. However, other problems touch on matters that we do not, but should, have influence over. It is nonsense that we can deal with tobacco advertising but we cannot deal with alcohol advertising. Furthermore, I do not see the distinction that has been made between Europe, the United Kingdom and Scotland. If we can legislate on tobacco advertising, why can we not legislate on alcohol advertising?

Currently, alcohol taxation is nonsense. Alcohol ought to be taxed on the number of units that a person is buying, not on whether it is a spirit, beer, wine or any other concoction. That is fundamental to addressing the health issues, which are the main reason why I am trying to engage in the debate, but we do not have any control over it. If we want to tackle the health problems that are associated with alcohol, we need to be able to address taxation. Whether we have to do that in conjunction with colleagues south of the border or throughout Europe is perhaps a matter for another day.

We do not have everything right in the bill and we have not considered the matter holistically: the bill does not address health problems or community interests as fully as it should do. However, there are many good things in the bill, so I will support it, although I hope that we will be able to make some changes to it during its passage through the Parliament.

15:41

Bill Aitken (Glasgow) (Con): As I listened to the debate unfold, I was reminded of how the circle has turned. I was convenor of the licensing committee of the City of Glasgow District Council in the late 1970s, and the licensing board upon which I sat implemented the Licensing (Scotland) Act 1976. In those days, we had a serious problem with drinking in Glasgow. In fact, the street cabaret that one could see was one of the most depressing aspects of my childhood. However, we adopted a fairly liberal approach towards the act and used the application of extension of permitted hours to force up standards. It worked: there was a fairly spectacular drop in the number of people who were arrested for being drunk and incapable and there was, for a time at any rate, an
improvement in street behaviour. As I said, the circle has turned and we now have a problem of binge drinking. The problem is generational to some extent, but it must concern us all deeply.

That being the case, there is no doubt that the licensing system in Scotland is in need of review. Some aspects of it are no longer working and there must be an enforcement regime to some extent. As my colleague David Davidson indicated, the Conservative party considers that the bill makes a positive contribution to those aims. However, he also rightly flagged up concern on a number of issues—for example, overprovision, differential pricing, 24-hour opening and the issues surrounding sports grounds.

I will concentrate my comments on issues that are more locally focused, as Paul Martin did. Living in and being an MSP for the city of Glasgow, I am no stranger to the consequences of irresponsible and excessive drinking. Equally, I freely confess to happily but, I hope, responsibly patronising certain Glasgow hostels and, having done that over a reasonable stretch of my adult life, I am perhaps in a position to speak with some authority and expertise.

Let us deal with the serious aspects of the matter and consider first the consequences of irresponsible and excessive drinking. They can include the nuisance problems of tiresome and unwelcome interference from people panhandling on the streets, people literally being ill in the street or people behaving in an annoying manner, all of which inconveniences and irritates law-abiding citizens. In that respect, I think particularly of tourists, who do not wish to see such behaviour when they come to Glasgow and Edinburgh. That behaviour also leads to a frenzied charge on fast-food outlets at closing time and a consequent discard of vast quantities of food containers and wrappers on our pavements, all of which makes the place look untidy and has to be cleaned up at public expense.

A more serious escalation of drunken behaviour leads to loss of temper, aggression, assault and, tragically, a regrettable deterioration of activity, sometimes into serious and fatal criminal conduct. In such instances, it is tempting to look at the individuals who are involved and come down on them like a ton of bricks, because everybody must bear personal responsibility for their own behaviour. However, at the same time, we must examine how the law enforcement agencies enforce the licensing regime.

No responsible licence holder wants to get a bad name with the police or the licensing authority, and the vast majority of licensees are responsible and do everything possible to co-operate with licensing boards and the wider community. However, they are not all paragons. The small minority of licensees who are prepared to sell drink to those who should not be served it because of their drunken state, to sell drink to those who are underage and to conduct their premises in an unsatisfactory manner should be dealt with much more seriously by licensing boards than currently seems to be the case. Few members would disagree that any licensee who is convicted, over a period, of selling drink on more than two or three occasions to persons under the age of 16, never mind 18, is not a fit and proper person to hold their licence. However, as far as I can see, in few instances are licences actually forfeited and that is quite wrong.

I have said in the chamber before—I make no apology for repeating this—that law that is not enforced becomes bad law in its own right and meaningless in effect, and creates an unwelcome lack of confidence in the wider regime. We must consider the issue of enforcement. Unless the proper resources are focused and targeted at those who are the cause of the problem, I am not convinced that the bill will bring the result that we would all wish.

The Justice 2 Committee’s report on the bill refers to the five licensing objectives under the proposed new regime. I remind members of those objectives, to which I am sure we could all sign up. They are:

“Preventing crime and disorder … Securing public safety … Preventing public nuisance … Protecting and improving public health”

in order to deal with the questions that Brian Adam raised, and

“Protecting children from harm.”

In evidence to the Justice 2 Committee, community police officers indicated that

“while improvements have been made over the years, the current regime requires reform before these objectives can be met.”

Paragraph 19 of the Justice 2 Committee’s report states:

“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 must send out the message loud and clear to the licensing boards that we are giving them the authority, and delegating to them the responsibility, to deal with those matters. They must deal with them adequately and on a much more robust basis than appears to be the case today.

Tavish Scott: I take Mr Aitken’s point on the powers that licensing boards will have. Does he accept, however, that part of our approach is to give training to licensing board members, to
ensure that that training is up to date and to ensure that it relates in particular to the bill that we propose to pass?

Bill Aitken: Absolutely; I have no difficulty in recognising the minister's point. In riposte, however, I make the point that although board members can have as much training as they need—in some of the more enlightened authorities, among which Glasgow has been one, some of them frequently have such training—they must have the bottle, if I may use that term in this debate, to stand up firmly and state that those who conduct their premises in an unsatisfactory manner and who constitute a danger to the wider community will simply have their licences withdrawn. That is the issue to which we must return.

On behalf of the Conservative group, I thank members all sides for their very kind welcome to Derek Brownlee. I am sure that, having heard this afternoon's debate, he might even come back tomorrow.

We do not seek to impede the progress of the bill today. As I have said, however, we shall be looking for some amendments at stage 2.

15:49

Mrs Mary Mulligan (Linlithgow) (Lab): I am grateful for the opportunity to speak in the debate, particularly as, not being a member of the Local Government and Transport Committee, I have not had the pleasure of taking part in its many discussions on the bill. The issues that are covered by the bill affect many of us as constituency MSPs.

I support the general principles of the bill and acknowledge the contribution of the Nicholson and Daniels committees to it. I accept that most adults in Scotland can and do drink sensibly, but because some do not or might be tempted not to, we must have a robust licensing system that seeks to regulate the use of alcohol.

I am sure that I am not the only member who is asked frequently, particularly by younger constituents, why some drug use is illegal while alcohol, which causes problems in relation to health and social order, is not. As the saying goes, we are where we are. Alcohol can be used safely and sociably, but we have a licensing system so as to reduce its possible ill effects.

I will concentrate my comments on three areas: involving communities, enforcement and health. I support the Executive's view that the licensing function should remain local, because local representatives are best placed to take on board local influences. However, it is right to remind licensing boards that they must look beyond themselves to the communities that they represent. Many people have strong views, informed by their experience, which could be useful to licensing boards. People must feel that their views are listened to and not just dismissed as a form of nimbyism. I agree with the Local Government and Transport Committee that the establishment of statutory local licensing forums is a good thing. I see the forums as a good balance to the licensing boards, but I share the committee's concern that 10 members on a forum might not be sufficient to encompass all local interests.

I will use an example from my constituency to show how enforcement needs to be improved. The example also relates to community involvement, because the community was perhaps not taken seriously. A licence to sell alcohol was applied for in a premises that was sited within the former boundaries of a primary school—in fact, it had been the nursery. Many parents objected, as did neighbours. The licensing board refused the application, but, on appeal to the sheriff, it was referred back to the licensing board, which was left with no option but to agree to it. Here is the local involvement bit: the application was referred back to the licensing board because objection had been made by a school board member—someone who was not considered an appropriate objector. I am sure that members will agree that that person was indeed an appropriate objector. I am pleased that, as the minister said in his opening statement, the Executive is discussing who is considered relevant in a discussion about a licensing application.

The applicant abused his licence. The police were called to witness and stop the abuse, but, as we will all appreciate, sometimes they had other priorities. I acknowledge the committee's concerns about police involvement, but I welcome the establishment of licensing standards officers, who I think will be a valuable addition in ensuring the enforcement of carefully thought-out licensing conditions. I look forward to hearing more detail on how LSOs will fulfil their duties.

To conclude my brief story, the case was finally taken to the procurator fiscal. The PF is to be commended because he acted to ensure that the licensee complied with his licence conditions. However, I am aware from previous cases that that does not always happen and sometimes, because of the PFs' workload, such cases get pushed down the agenda. I hope that the minister will recognise the ultimate role of the PF in the licensing system, which needs to be monitored continually.

My constituents have been left disappointed by their experience and, worse still, feeling that they have been ignored by those who are meant to
help them. I recognise that some of the changes in the bill might address their bad experience, but I hope that the minister will reflect on whether the bill goes far enough.

We hear frequently that Scotland has a culture of binge drinking and we have only to look at some of our high streets to see the proof of that. When the licensing hours were relaxed some years ago, the argument was made—Brian Adam referred to this—that if we gave people longer to drink, they would not binge and we would develop a more continental approach to alcohol. However, that has not been the reality and longer hours and the use of happy hours have resulted in some people drinking much more than they would otherwise have done. I do not advocate going back to shorter opening hours, but I welcome the Executive’s attempts to stop happy hour promotions by prohibiting variations in drinks prices within a 48-hour period. In addition, we need better education by schools and parents. Young people need to be helped to understand how they can enjoy a social drink without bingeing.

Since 1980, the number of alcohol-related deaths in Scotland has risen from less than one in 100 deaths to one in 30 deaths—a 240 per cent rise. Of that number, deaths with a diagnosis of liver disease rose by 444 per cent. If we are serious about dealing with issues around social exclusion, the fact that people who live in the most deprived areas were nearly six times more likely to die from causes related to alcohol than people who live in more affluent areas should concern us all.

One need only visit an accident and emergency department for a few minutes before a member of staff will mention that alcohol is a big factor in their workload.

My final point on health—and I make it as a committed feminist—is that women suffer disproportionately from alcohol misuse. Undoubtedly, men are still the big drinkers. In 2000, 41 per cent of men aged 16 to 74 were drinking at levels that were hazardous to their health, compared with 15 per cent of women. However, women’s physiology can mean that the impact on them is greater.

I mentioned the health impact of alcohol to show that those who say that we regulate too much, or that we are becoming a nanny state, are wrong. I repeat that although many use alcohol responsibly, some do not, which is why we need licensing.

I welcome the Licensing (Scotland) Bill. I welcome the acceptance that we need a licensing system that will lessen the disadvantages of alcohol misuse. I welcome the fact that the bill will bring the licensing system into the 21st century. I also welcome the minister’s statement that licensing legislation is only part of the issue and that there is a need for a shift in culture in relation to alcohol. However, that is probably a debate for another day.

Patrick Harvie (Glasgow) (Green): Every other party has extended its welcome to Mr Brownlee and it would be rude if the Greens did not do the same.

On behalf of the Greens, I also welcome the Licensing (Scotland) Bill. Like Mary Mulligan, I am not a member of the committee, which has clearly worked hard on the bill. I hope, therefore, that members will forgive me if I am not completely up to speed on some of the finer detail. I will wait for the closing speeches before taking a final view on the amendment.

The values on which the licensing system is to be based are the first thing to welcome. Earlier, Bill Aitken talked about the five high-level objectives of the bill that are also intended to be the values of the licensing system. In welcoming those values, the only regret that I have is that alcohol is to be the only recreational drug to which we apply such a sensible approach. It would be beneficial if the same approach were taken to other recreational drugs that are currently illegal, many of which have higher social and health costs.

The bill’s ideas about local forums are welcome. Not only do local people need a listening ear and the right to object, but they need a forum in which to participate. Perhaps, when he closes, the minister could tell us whether it is expected that those forums will meet in public. If they are in keeping with local authority committees, that would be expected. However, that is not made clear in the bill.

The right of local people to object is important and there is a clear parallel with the planning system, which we will debate at great length in the coming weeks and months. However, there is no point in empty consultation exercises that leave people feeling that their views and opinions have been ignored. There is no point in continually turning people off engaging with local authorities or the Executive on decisions that will impact on them. If people find that their views have fallen on deaf ears, they will be less likely to engage in the future. We need to have a listening ear, but we also need to give weight to communities’ views and objections.

The simplification of licences is to be welcomed, as are the provisions on irresponsible drinks promotions and the Executive’s confirmation that it will consider extending those measures to off-
sales in some way. However, we should ask whether the bill should also include provisions on the promotion of responsible drinking. Information about support services and problem drinking should be available at the point of sale, and I wonder whether that should be covered in the bill.

There are some reserved aspects—Brian Adam touched on them—including the wider use of the media and advertising to drive up consumption. The promotion of consumption by young people has changed slightly due to public pressure on the sale of alcopops and so on, but there are still many aspects of the way in which alcohol is promoted that we should address.

In the minister’s policy document—and, I think, in his opening speech—he quite rightly dismissed the myth of 24-hour drinking. I have received e-mails and one or two letters from people who are concerned that there will be 24-hour drinking—that perception is still out there, and we need to challenge it. The presumption against 24-hour drinking is absolutely the right approach, but there is no reason why we should not welcome a premises-by-premises approach, with determination made locally.

The general approach on personal licences is welcome. Training will be a condition of personal licences but, having looked through the documentation, I am still unclear about what that training will cover. Will it simply be about the legal requirements of holding a licence or will it cover the more useful stuff, such as public health, conflict prevention and resolution and good practice?

I want to say something about access for under-

18s. First, at the lower end of the age range, I completely endorse Paul Martin’s insistence on proper baby changing facilities, although I am happy to admit that I do so from a far more selfish point of view. If people were expected to change their babies on tables in bars I would rapidly find myself uncomfortable drinking my pint there. It is clear that the provision on baby changing facilities is needed.

I am unclear about the rationale for the opt-in approach. It seems to me that, in the bill, we do not have something that is at one extreme or the other—purely opt in or purely opt out. There is some useful stuff about encouraging licensees to carefully consider the implications of allowing under-18s access to their premises, but I worry about the implicit acceptance in the committee’s report of the idea that large numbers of establishments are simply inappropriate for under-

18s. I wonder whether we should question that assumption rather than signalling approval of it.

Finally, I turn to some aspects that are not in the bill. There is a long-term trend away from locally owned, independent establishments towards chain pubs and city centre megapubs. I walk home through Glasgow city centre quite late every Thursday night and I see the impact of city centre drinking. We should acknowledge that megapubs are a focus of social problems in some parts of the country. The way in which highly intensive, industrialised drinking establishments are run makes it more difficult for staff to get to grips with, for example, resolving conflict in a non-violent way and turning people away from the bar if they are already drunk.

Tavish Scott and Bruce Crawford mentioned the importance of culture change, which it is right to say will not result from legislation.

Brian Adam: Will the member give way?

Patrick Harvie: Do I have time?

The Deputy Presiding Officer (Murray Tosh) indicated disagreement.

Patrick Harvie: I am sorry; I have no time to give way.

In education, health and children and young people’s services, and in the Development Department, the Executive can take action beyond legislation that will help to promote culture change. I draw members’ attention to the Barnardo’s briefing, which I am sure many have read. The argument is made that dealing just with price and access is more likely to lead people—particularly the minority of young people who misuse alcohol—to use cheaper, illegal drugs, which have greater health consequences. We must fundamentally examine culture change.

I add the Green party’s endorsement of the bill’s general principles.

16:06

Donald Gorrie (Central Scotland) (LD): The issue is certainly important. We must tackle the blight of binge drinking and the associated problems that it creates. One idea that we could consider is combining the anti-smoking campaign with the anti-excessive drinking campaign. They could rub off on each other and help to improve our social life. As other members have said, the bill alone will not solve the whole problem, but it can create the background against which we can have a successful campaign to reduce the scourge of bad, excessive drinking.

I very much welcomed the assurances in Tavish Scott’s opening speech. It was a refreshing change that he accepted many of the Local Government and Transport Committee’s points. Some ministers are fortified by their civil servants to resist anything that comes from committees as an evil that is to be kept at bay. The minister was remarkably forthcoming.
Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Compliment.

Donald Gorrie: I am allowed to compliment Tavish Scott because he is one of my colleagues who is not seeking to become my party leader.

I do not know about other people, but when I see a report by a committee on a subject that I think I know something about, I read it eagerly to try to find faults so that I can stand up and say that it is all a load of complete rubbish. Therefore, I was extremely disappointed in the report on the bill, because it is excellent. It rings almost all the right bells, so I give credit to the committee.

We have come a long way. In the first year or two of the Parliament, I was seized with licensing and alcohol problems as an issue—not personal, but political—and lodged various questions to ministers. They said that they had no plans to do anything about licensing, so I said, “Right. I will propose a member’s bill.” Partly as a result of that—people’s opinions will depend on how cynical they are—the Executive hastily appointed a committee under Sheriff Principal Nicholson that produced an admirable report. On alcohol policy, I am now a member of the Sheriff Principal Nicholson party. I hope that members will lodge amendments that are based on his excellent critique of the bill. If they do not, I will. He hit many of the right points.

We must use the existing law and when we have the new law, we must use that. I discovered from asking questions previously that minimal use is made of the existing law that thou shalt not serve booze to somebody who is drunk. We have a nice law to which nobody pays attention. Overprovision is also a serious issue. I thought that we had to get stuck into that, but then I discovered that existing law gives licensing boards powers to deal with overprovision, although they never do anything about it.

I became interested in licensing and alcohol because of my interest in young people and the issue of young people getting drunk. The committee’s report mentions proof of age and the Young Scot card. I would strongly favour an official national proof-of-age card. I am told that, as a Liberal, I cannot propose that such a card should be compulsory, but even a voluntary card that provided the user with a big advantage would be helpful. Proof of age is an issue. Being an old fogey, I find it extraordinarily difficult to tell whether someone is 16, 17 or 18. We cannot blame the person at the checkout for rushing things through and for not querying people when they should. I believe that we should explore the idea of a more official proof-of-age card, which could be based on the Young Scot card.

I also support the recommendation in the committee’s report that the bill should make it clear that there should be an opt-in scheme for pubs that cater for children rather than an opt-out scheme.

An important issue is training, which should be offered to those who make a career out of running pubs. As with any other activity, proper training and qualifications should be available to people along the way, so that they can build up from just serving at a bar to running a whole pub.

We also need proper qualifications for door stewards. I know that there is already English legislation on that. Perhaps—without offending people by using Sewels and other such naughty things—we can nick some of that legislation or even incorporate it into the bill. People who go to pubs much more often than I do assure me that the conduct of door stewards is a major issue, which we need to deal with strongly.

A good proposal in the bill is the introduction of licensing standards officers. The committee’s report has quite a bit about the role of licensing standards officers and the independence and powers that such officers will have. We need to clarify those issues, because licensing standards officers will be a key part of quality control, which is what we need if we are to improve the atmosphere of some of our less excellent pubs.

Another factor that will contribute to quality control is the establishment of local licensing forums, which are an excellent idea. It is good that we will also have a national licensing forum, but we need strong local licensing forums with wide representation. The number of such forums has been mentioned as an issue, but if they are genuinely representative of different parts of the community they will be able to do positive things about alcohol licensing, overprovision and so on.

The reports that the police give to licensing boards, the extent to which such reports are used and exactly what those reports say is another important issue that has been raised. I believe that the chief constable has a particular locus that should be recognised in the bill.

Not everything in the bill is excellent. I was delighted to find that the report suggests the need for a national register of licensees, which seems an excellent idea. However, it also mentions that the official reply to the suggestion was that it “could be costly and might pose a range of other difficulties”.

That could have come straight out of my tapes of “Yes Minister”. Obviously, Tavish Scott blinked at that point—but so did Homer, so I guess that Tavish is allowed to blink as well.

The key issue is that we need licensing boards to show real backbone, which they have hitherto quite often failed to do. We need to give the
boards stronger powers, for example by allowing them to require attendance rather than just request it, by empowering them to consider the merits of applications for which no objections have been received and by giving board members proper training. Again, the number of members that boards will have is important. However, if the boards do not show backbone and get a real grip on the issue, this whole process will have been a waste of time. I am not sure that we can provide backbone by law, but we need to try to do so to ensure that the boards deliver the sort of social life in Scotland that we all want.

16:14

Pauline McNeill (Glasgow Kelvin) (Lab): It is always interesting to follow Donald Gorrie and to get an insight into his thinking. Those of us who got to know Donald a bit better from his participation in the Labour-Liberal review will know that he is anything but an old fogy. If members have not seen that, they can ask me about it later.

I congratulate the committee on its clear and easy-to-read report on an issue that is complex for those who have not had much prior experience of it. Like others, I record my thanks to Sheriff Principal Nicholson for his report.

I will support the general principles of the bill, subject to my getting some clarifications on the record this afternoon.

Ministers are right to be bold and up front about the consequences to all Scots of continuing to drink in line with past trends. To some extent, I beg to differ with Mr Aitken, who suggests that this is a generational issue. It is, in so far as we are trying to address problems relating to a particular age group, but drinking has been an issue for many years, certainly in my circles. When modernising our licensing laws, it is important that we set out the rules for sale, consumption and the pattern of licences. That should underpin the main ideals behind the reforms. It is for politicians to set out what they are and are not prepared to tolerate. We should not be shy about doing that. I agree that we should focus on the 16-to-24 age group, but none of us is suggesting that the bill should not also regulate the availability of alcohol for sale to adults.

I have followed the debate for some time and have had the opportunity to go out on to the streets of Glasgow with the minister and his team, to consider the impact of licensing on Scotland’s largest city, part of which I represent. Glasgow has more licences than any city in the United Kingdom outwith London, which is an astonishing fact. Because of my experiences, I strongly support the committee’s view that it is wrong to ignore the significant role that the police play in providing intelligence to licensing boards. If it were not for the police, boards would not have the kind of intelligence that they do on how clubs and pubs operate their licences. I argue for strengthening, rather than reducing, the role of the police.

We need to respond to communities. I take heart from some of the principles that the bill is seeking to implement. We need to take heavier action when pubs and clubs fail to control violence. I represent part of the west end of Glasgow city, where there is a growing number of late licences. To some extent, we welcome that development, but we want to get the balance right. My constituents complain that that is not happening in some cases and that the peaceful enjoyment of where they live is being harmed. I want to know that the new system will equip my constituents with the ability to make the case for changes, so that they can show that there is overprovision or that we are not getting the balance right on late licences. I want to be reassured that the provisions in the bill will mean something and that my constituents will have redress.

I support the Local Government and Transport Committee’s view that there is not enough detail in the bill for us to make judgments on some finer points. I highlight one technical point that has been raised with me. I think that objectors should have the right to have an applicant’s full case sent to them, just as applicants have the right to see the objectors’ full case.

I come to the main issue that I want to raise. I know that the minister has heard from me on the matter before, so I apologise for reiterating my point, but it is important that I get it on the record. I offer an alternative view to the one that Margaret Smith expressed. I am not saying that the committee is wrong, but we should get everything out in the open, so that we are clear about what we are signing up to. Glasgow’s nightclubs have raised serious concerns with other members, the minister and me about their interpretation of the bill. I want to draw members’ attention to those concerns. In the nightclubs’ view, further work on the bill is needed to clarify the proposal to move away from the existing licensing regime, which may have some unintended consequences.

There is talk of abolishing a two-tier system. However, I suggest that we may want to retain elements of that. Many of the nightclubs that currently have an entertainment licence open very late. Generally, they offer a high quality of entertainment. They have invested heavily in high-quality stewarding systems and closed-circuit television, but I do not believe that that has been acknowledged. I would like it to be acknowledged. The clubs to which I refer tend not to open during the day. Broadly, a sensible distinction has been drawn between pub and club provision,
notwithstanding the emergence of hybrid pubs. However, it seems that under the bill it will no longer be possible for licensing boards to draw that distinction, so the abolition of a two-tier system has consequences for some clubs.

Bruce Crawford: Does Pauline McNeill accept that the hybrid scene in Scotland is very hybrid? There are some establishments that provide food, drink, sports entertainment, hotel facilities, restaurants and nightclub facilities. How can we have separate licences as far as that is concerned?

Pauline McNeill: I am coming to that. My central point is about the unintended consequences of not making a distinction. I do not support a particular view; I just want everyone to be clear.

The nightclubs are saying to me that in order to get access to the new licences, pubs that do not currently open late might offer entertainment that they did not before. The conditions of the new licence are not particularly onerous, so it is clear that new businesses will open. Nightclubs will have to reduce their levels of investment in order to compete, and they tell me that they will have to open during the day, which they do not currently do, because they will have to regain the money that they will lose when there is more competition. I do not argue for or against that. I am saying that we must be clear that the new system will have consequences that will impact on existing businesses. We do not want a system that creates so much competition that it reopens the debate about who competes with whom for the sale of alcohol. High-quality entertainment is important. I do not want the clubs to have such stiff competition that they reduce their investment in entertainment. We do not want to undermine the high quality of entertainment in Glasgow. As it is, I do not believe that licensing boards are able to make that distinction.

The industry feels that it is under attack; implementing the new anti-smoking legislation and a new licensing regime will be onerous. Let us be alive to all the consequences and if there are to be losers, let us address how the Parliament will deal with that.

16:22

Mr Kenny MacAskill (Lothians) (SNP): I apologise for not being here for the opening speeches. I was at a constituency engagement and I am grateful for members’ indulgence. I also apologise to Mr Brownlee for not being here for his entrance to the chamber and I welcome him.

I welcome the long overdue debate, but I have one criticism. I wonder why, having appointed Sheriff Principal Nicholson, who recruited able committee members and undertook adequate consultation—as Donald Gorrie commented—the Executive needed a further consultation. That said, we are where we are and progress must be made. I support the comments that we should be looking at Sheriff Nicholson’s critique of the bill.

Although there were spats about various matters—on our side of the chamber and on others—it is clear that more unites than divides us. Almost every speaker made points about significant matters with which I fully concur. The fact is that we have a problem with alcohol in Scotland. I will not moralise about that because I have offended in spectacular fashion more than most and I fully accept my culpability. Although I seek to reform, I still transgress sometimes.

That the change in our approach to drinking must be both cultural and legislative was made clear by Mary Mulligan. We need new licensing legislation because the current system is not working and needs to be changed. The system comes to some extent from the early part of the 20th century and we need to recognise that society has moved on. There are worries about liberalisation, but we must accept that there has to be movement. That does not mean that there has to be a free-for-all and I concur with Mary Mulligan that we must set parameters and have rules—there can be no free market for alcohol.

That said, the society in which we find ourselves has moved on. I discussed recently with an expat Scot his reminiscences of Scotland and he spoke of the darker side of Lanarkshire, back when pubs were the forbidden fruit and one could not see into them. That was not a healthy atmosphere and it was contrary to our interests.

We should welcome any professionalisation of the trade. There was a myth that licences were held by wives, when we all knew that it was the husband who ran the pub; such mystique is fundamentally flawed. There should be openness and transparency. We should encourage and trust those who want to improve their businesses. There are concerns about how lager is promoted and sold, but there should be some trust in the licensee. We have to set parameters, about whether music can be played and about what licensees can do in the confines of their premises, to take cognisance of the people who live around licensed premises. At the end of the day, however, subject to rules about when they can open and what they can do within their premises, we should allow licensees to use their common sense.

We need to clamp down on promotions that encourage binge drinking by youngsters. However, we might at the same time clamp down on opportunities for licensees in some parts of Scotland to promote a free pie with a half for pensioners, as long as they leave their whippet
outside. What is the problem in allowing licensees to do that? We should keep it in mind that some promotions are perfectly viable and healthy—there should be some trust on that.

The fundamental problem with alcohol in this country is cultural and there is no easy way of changing a cultural problem. That applies as much to alcohol as it does to other matters that pervade our society, whether domestic violence or knife crime. Such problems have to be addressed using a legislative framework.

I do not see anyone in the chamber who is a member of the cross-party group on Scottish writing and publishing, but when Carl MacDougall talked to the group about society and the importance of literature he made a humorous remark of which we in Scotland should take cognisance. He asked us what the fact that the Eskimos have about 50 words for snow says about Eskimo culture, and we all laughed. Then he asked, “In Scotland, how many words are there for being drunk?” and he started off: fou; stotious; blootered; bladdered. The list goes on, but I am conscious of restrictions on language in the chamber. Carl MacDougall narrated 50 definitions of being drunk and each of us in that crowded room could probably have added at least 10 more. Carl asked, “What does that say about Scottish society?”

To be fair, other societies in northern Europe, such as Germany, Finland and Norway, could probably do likewise. However, we should not laugh at the Eskimos without considering what our list of words says about us and what it says about a problem that we should be addressing. As Bill Aitken said, individuals must consider their behaviour—some of us perhaps more than others—and recognise that, for their own benefit, never mind that of society, they have to change. Scottish society should take a look at itself, because there is a pernicious belief that, being Scots, we can drink everybody else under the table. That may be viewed humorously and used euphemistically but it is undermining and dangerous.

The change has to come from the top. It is easy to say that 16 to 24-year-olds should be targeted, although in some areas there is a problem of youngsters drinking Buckfast and young girls drinking alcopops, which we have to address. However, it ill befits anybody to say that it is a problem of the young, when the Christmas bash of every political party in the Parliament will involve copious consumption of red wine and other alcohol, and when every board of directors’ reception in this country, from the Royal Bank of Scotland on, will involve the consumption of alcohol. We cannot simply pin it all on the younger generation, because it is not their fault. The fault starts at the top, with adults and with the parents of those youngsters; therefore it is about each individual addressing their behaviour and Scotland addressing its culture.

It is true that there is a problem in northern hemisphere nations such as Finland and Norway, but that does not apply to our kinfolk in Canada. Toronto and Ottawa do not have the same drinking culture as us, yet arguably the weather and climatic conditions there are worse. We cannot make the excuse that it is something about the dark nights and the cold winters that makes us go to the pub.

There is an argument that alternatives, such as sporting facilities, amateur dramatics and music should be provided. There has to be a carrot as well as a stick. However, change has to come from within individuals as well as from within society. We should support legislative change, but recognise that it is just a prelude to cultural change.

16:29

Michael McMahon (Hamilton North and Bellshill) (Lab): Politicians are often accused of trying to be all things to all people. In relation to some issues that is unacceptable because, quite simply, we cannot have it both ways. However, when it comes to alcohol, it is difficult not to address competing positions and to give something to every side in the debate.

It appears to me that there are two distinct views of alcohol. Some people see it as the devil’s brew. They see it as something that robs people of their brains, takes food from the mouths of babies and shoes from the feet of children; they see it as a substance that kills hundreds on the highways and through the ill health that it causes. They are right—it does. For other people, alcohol is a mild tranquiliser; it calms jaded nerves and is no more than a social lubricant. It is—those people are right, too.

Throughout the time that the Local Government and Transport Committee has considered the bill, I have often found myself trying hard not to look at it from one or other of those perspectives. As Margaret Smith said, there had from the outset to be recognition that, in assessing the use of a legal drug, we would have to consider social costs in terms of ill health, crime, public disorder and antisocial behaviour. We also heard from the business community and from health experts that the bill could have social, economic and health benefits. What made it easy to focus on what the bill was about was recognition that, whatever side one takes in the debate, the system by which we have hitherto regulated supply and use of alcohol is too complex and outdated and must be changed.
The bill seeks to simplify and modernise the licensing system in Scotland, and it addresses the cultural changes that have taken place in our country. As the minister said, Scotland has always had a problem with alcohol, but the manifestations of that problem are not what they were a generation ago, when licensing laws were last addressed. I remember clearly from my early days that my grandfather would bemoan how times had changed and recall the good old days when women did not go into pubs. Statistics have shown that one woman in four reported exceeding daily benchmarks; that one woman in seven drank alcohol hazardously; and that approximately one woman in every 21 in Scotland had a degree of alcohol dependence.

The situation has also changed for men and for young people, as Mary Mulligan said. As Pauline McNeeil observed, things were never as good as my grandfather remembered them, but statistics show that the situation now is much worse than it was in his day. We have to deal with the modern reality of alcohol abuse and its social consequences, and I think that the bill gets the balance right between encouraging sensible alcohol consumption and addressing the effects of alcohol abuse.

A desire for more efficiency in the workings of licensing boards is a good idea, but we must be careful that, in moving towards that, we do not shortcut the assessment of licence applications. We must take time to use local knowledge and address local concerns, and I agree with David Davidson and Mary Mulligan, who highlighted that issue, although I do not agree with David about opening up alcohol sales in football grounds. To compare Newcastle with Glasgow does not work. Newcastle has one team; that team can meet its opponents at 3 o’clock on a Saturday afternoon. Statistics have shown to work in Newcastle is effectively not just blanket opening. What has been raised with me by police. Such a service has been delivered his report. Because it has changed, he did not deliberate on the development of dial-a-drink services from our off-licences, a problem that has been raised with me by police. Such a service is not a bad thing, but it is evidently being used by young people to circumvent no-proof, no-sale initiatives. We must not overlook that.

My colleagues on the Local Government and Transport Committee will be disappointed if I do not raise my pet subject. As I say, the use of alcohol in Scotland has changed over time; in fact, it has changed since Sheriff Principal Nicholson delivered his report. Because it has changed, he did not deliberate on the development of dial-a-drink services from our off-licences, a problem that has been raised with me by police. Such a service is not a bad thing, but it is evidently being used by young people to circumvent no-proof, no-sale initiatives. We must not overlook that.

I welcome the minister’s comments on the matter and I am pleased that he shows willingness to listen to the good sense of the Local Government and Transport Committee across the range of issues that it raised in its report. I also welcome Donald Gorrie’s support for the committee’s report. The bill is worthy of our support and I encourage members to support its general principles.

16:36

Mr Davidson: We have had a debate in which most members could agree about the principles of the bill, and we are beginning to examine some of specific functions and powers that those officers will be able to use in exercising their role. That concern was expressed by a number of members, so it is absolutely legitimate that we consider such matters further. We also generally support the establishment of a national licensing forum to provide good guidance to ministers on the regulations that would be required to support the new licensing system. However, we are right to be concerned that we still know too little about the composition and precise role of that body. I look forward to hearing from the minister about that in the wake of his announcement, and I agree with what Margaret Smith said on that.

The bill contains many good proposals on licensing, such as single premises licences, occasional licences, the ending of permitted hours, and other administrative arrangements, such as those for appeals and objections. To change the culture of drinking, we need more than legislation, but the foundations on which to build a cultural change are clearly contained in the ambit of the bill.

I agree with Paul Martin and Donald Gorrie about the need to educate young people. Paul Martin’s comments about his experiences in respect of the importance of having the right environment into which to take a young person reminds me of the reality that I have faced in dealing with the bill. I have three children—one in their early 20s and two in their late teens—who think that I come to Parliament every week to consider how to ruin their social lives.

Mr Davidson: What I hope to get round to saying at the end of my wind-up speech is simply that there should be a bit more local discretion, and not just blanket opening. What has been shown to work in Newcastle is effectively supported by the police.

Michael McMahon: David Davidson completely ignores the fact that there is a social dimension in Scotland that makes the situation here entirely different, so the two examples are not comparable.

The development of licensing standards officers is something that we can all support, but we should not rush into that without considering the
the fine print for clarification. As one or two members have suggested, we also need to consider other matters.

Bruce Crawford talked about the need for a change in culture. We also heard about that from Michael McMahon, Kenny MacAskill and others. The need for education right through life as part of that process has been emphasised.

Margaret Smith accused me of being totally biased in favour of the business community; I point out that I was the member who talked about protectionism in the business community, which upset one or two members of that community quite nicely.

Margaret Smith: I prefaced my comments by saying that people who are a little bit more cynical than I am might think that. I will comment on the substantive point that David Davidson made. He used the example of pensioners, who were mentioned at committee and whom Kenny MacAskill also mentioned. How could we, in order to tackle irresponsible drinks promotions that are aimed particularly—but not totally—at young people, implement legislation that has some kind of age-discriminatory exemption that states that it is okay for pensioners to get blooted?

Mr Davidson: I was not suggesting that, but it has been pointed out to all of us that certain sectors of the community feel that they are being got at. Michael McMahon mentioned his children’s view of what he comes to Parliament to do to their social lives. I believe that there are responsible licence holders who could manage little promotions sensibly; there need not be a blanket approach that goes back to what we did in the old days. In fact, the British Beer and Pub Association has voluntarily moved to abolish happy hours and so on and is considering further exercises.

Bristow Muldoon talked about labelling, which is important, and test purchasing. Most people on the committee were supportive of the development of test purchasing and we would like to see proposals on that from the minister.

Bill Aitken and Mary Mulligan talked at some length about enforcement of a regime. If we put a regime in place, it must be applicable and it must be understood clearly so that people can deal with it responsibly.

As usual, Brian Adam raised a reserved matter, about taxation based on units of alcohol. Perhaps his colleagues at Westminster might like to raise that issue.

Patrick Harvie talked, as did Donald Gorrie and others, about training for personal licence holders. The matter exercised the committee during stage 1 and I hope that more clarification will be provided on it. Certainly, when the minister came to the committee to give evidence, we got some clarification from him and I believe that he gave the committee the assurance that he would consider what it had said.

Like me, Donald Gorrie and others mentioned proof-of-age systems, because part and parcel of the problem is that it is very difficult to identify a person’s age. In supermarkets and off-sales it is almost the case that we must have such a system. Donald Gorrie and I also mentioned the training and behaviour of door stewards, or whatever we want to call them. I know that the city of Aberdeen has a licence scheme for doormen and that there is some training available, but I am not sure how far it goes. We would all like to see something that goes a bit further.

Pauline McNeill and others talked about police intelligence and Paul Martin mentioned that the police reporting format could be a bit more straightforward, more easily understood and perhaps more easily applied, which comes back to the argument about enforcement of regimes.

The premises profile, which Paul Martin mentioned, is a new idea. The police would provide a profile to the licensing board when a licence was up for renewal, for example. I think that there is general support for a database and I would like the minister to say why there should not be a database of licence holders.

Kenny MacAskill talked about the need for “professionalisation of the trade”, which should be part and parcel of modernising and improving career prospects in the trade so that we can have high-quality establishments that tourists want to use. Such an approach to the promotion of anything that has a potentially damaging effect is needed.

I am sure that the minister will talk about dial-a-drink services, in relation not just to Michael McMahon’s comments, but to the problem of parents who hire large cars to take their children places, without realising that there is a bar in the vehicle that gives out free drink. Such issues were mentioned to the committee.

In general, the Conservatives support the bill’s principles, although we have difficulties with one or two fine-print issues. I certainly have difficulty with the fact that the minister has not yet clarified issues that he assured the committee he would clarify. I remind him that on two or three occasions when he gave evidence he said that he was an advocate of free trade, so I would like him to go further on that issue. I also ask him to have more discussions with the police in Scotland. The police are the guardians of society and we must work closely with them and pay heed to their efforts and their assessment of the origin of problems. I think that all committee members supported such an approach throughout the process.
Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Members of all parties welcome Derek Brownlee, the new Tory in the Scottish Parliament, so I begin by referring to an old Conservative. Winston Churchill suffered an enforced departure from the constituency that he held in Dundee when he was beaten—in 1923, I think—by a candidate for a party that I believe advocated temperance. We say that the drinking culture in Scotland is deeply ingrained, as indeed it is, but there was a counterpart to that culture, which approved of temperance and frowned on alcohol. It might no longer exist, except perhaps in pockets of Cathcart and the Western Isles and even in parts of the Highlands. The culture has changed.

I confess to having a particular interest in consumption of alcohol. When I am under the influence, the world seems to be a happier place, problems seem to have much simpler solutions and I am even capable of becoming dogmatic. Humphrey Bogart said that the source of many of the world’s problems was the fact that other people are “three drinks behind”. Although there is an element of truth in that, the serious point to which many members alluded is that too many people in Scotland are six, nine or 12 drinks ahead, which is a far greater problem.

The written submissions that Alcohol Focus Scotland and the Association of Chief Police Officers in Scotland provided to the Local Government and Transport Committee contained the most fundamental analyses of the problem. ACPOS said:

"Legislation, unfortunately, does not change ingrained culture".

Members made the same point in the debate. Drinking to excess is acceptable in Scotland.

ACPOS pointed out that in little more than two decades, from 1980 to 2003, the number of licensed premises in Scotland rose by a fifth—3,000 more pubs opened during the period. ACPOS argued that as drinking increased, licensed premises increased in number. The association found it difficult not to accept the proposition that the more licensed premises there are and the longer such premises remain open, the more drinking there will be. I find it hard to resist that logic, although I know that it can be challenged. However, for that to happen, the culture must change.

Cultures can change, of course. In evidence, Jack Law of Alcohol Focus Scotland compared Scotland with other countries; in his interesting speech, Kenny MacAskill stressed many of those points and therefore spared me the temptation to be dogmatic. Jack Law pointed out that over the past 30 years other countries have succeeded in substantially reducing consumption of alcohol per head. I do not quite know how the statistics are calculated—other than through lengthy liquid research—but France, Italy and Spain have reduced consumption of alcohol per head by 47, 37 and 18 per cent respectively. A substantial culture change has clearly taken place in those countries.

I echo what Kenny MacAskill said: we should resist the temptation—a temptation that seems to exist in society—to blame young people and to say that they are the source of the problems. I am not saying that any particular member said that, but there is an underlying assumption that it is the case. It is not the case. Young people are not the problem; they inherited this Scotland from us. We, not they, created the problem.

The Local Government and Transport Committee did a good and thorough job. The SNP played a substantial part in that, just as we play a substantial part in all the work of this Parliament. Members know that, even though they may feel that we go on a bit from time to time—not me, obviously.

The minister has accepted many of the committee’s recommendations, and we welcome that. However, we can go further. The police have stated that their advice on licensing applications used to be able to go beyond simply providing details of convictions. A senior officer in Lothian and Borders police has repeated that point recently and I hope that the Executive will accept it. The standard of proof that is required in matters relating to licences is a civil standard of proof. It comes down to the balance of probabilities, so further information from the police is essential.

I encourage members of the Local Government and Transport Committee to support our reasoned amendment because doing so would enhance the motion and would be entirely consistent with what committee members decided. We drew attention to the fact that the Finance Committee had said that more robust financial details were required. The Local Government and Transport Committee was therefore

"not able to determine whether the Financial Memorandum is adequate."

If he reads page 92 of the committee’s report, the minister will see that Mr Crawford’s reasoned amendment borrows the committee’s wording. It is complete rubbish to argue that supporting the reasoned amendment means voting against the bill. The reasoned amendment can enhance and supplement the motion.

There is a serious problem in the lack of detail on licensing standards officers. As the committee found, we do not know what LSOs’ functions will
be. We do not know what they are for, we do not know what they are to do, we do not know how many there will need to be and we do not know how much they should be paid. The police think that even the limited information that is available shows many defects. LSOs should not have the power to enter unlicensed premises, such as our homes. It seems to me that that particular part of the bill should not have been included until it contained much more detail. To say that LSOs should have a starting salary of £15,000 to £30,000 rather suggests that the Executive just has not worked things out.

Lack of forethought seems to be the hallmark of the Executive’s approach to formulating legislation. If the Executive could take one lesson from me, I would suggest that the Executive should kick binge legislating.

16:49

Tavish Scott: Yes, I think that Fergus Ewing deserved only one clap for that.

It is a great pleasure to wind up the debate this afternoon. The debate has been informative and broadly consensual; there has been broad support for the principles of the bill.

I thank Pauline McNeill for reminding Parliament that she and I spent an enjoyable evening out looking at the nightclubs of Glasgow—purely in the interests of research, I add. I also thank Donald Gorrie for his praise, which was a surprise, although we are grateful for it. I noticed some eyebrows lifting when he mentioned his support for what sounded like a national identity card—Mr Rumbles certainly looked amazed at that point and I suspect that there are a few internal discussions to be had on that issue. I was disappointed that Paul Martin had to point out that we got thumped in the golf match on Saturday. I suspect that my non-attendance had nothing to do with that, one way or the other. I was grateful for Mr MacAskill’s sinner-repenteth-nearly speech. He raised a number of serious points to which I will return.

At the outset, I recognise that, as many members said and as I tried to say in my opening speech, the bill is not the sole answer—I have never argued that. The Executive and all parties have rightly pointed out that, in the longer term, the issue is as much about cultural change in Scotland as anything else and it most certainly cuts across many portfolios, not least those of the Minister for Justice, the Minister for Education and Young People and the Minister for Health and Community Care. However, we must also recognise the importance of the hospitality industry to Scotland. We need a thriving, viable and attractive hospitality industry, not least for tourism, but also for local people in local communities. I believe that the balance in the bill is right, on detailed issues and more broadly. For example, the personal licence could become a qualification for people who work in the trade. To pick up a point that many colleagues made about training and careers, why should people not have a career in the trade? We hope that, under the bill, we will make progress on such matters.

I will rush through the many detailed points that were raised. Bruce Crawford made the general point that there is not enough detail in the bill. We must consider the reality of the Nicholson and Daniels reports. As an aside, I point out that Mr MacAskill was wrong to say that nothing happened after Nicholson—of course, the Daniels report was specifically about the off-trade, which was a concern of members throughout the Parliament, although maybe not of Mr MacAskill. Mr Crawford must accept that the Nicholson report presented us with a framework and that it was Government’s job to create legislation out of it. We have had to consult on many of the issues, simply because consultation is part of the Parliament’s enshrining legislation and procedures, which is correct. The new national licensing forum will make progress on many of the details. As I have said repeatedly to the Local Government and Transport Committee and today, the Parliament will have many opportunities through the normal procedures to scrutinise the details of that work.

On local licensing forums, several members mentioned the importance of giving local people the ability to influence the process and the system. Mary Mulligan’s constituency case was possibly the best illustration of that. I hope that, under the bill, the problem that she raised will not occur, simply because the bill will allow any person to object. The measure is a direct response to the sort of case that Mary Mulligan correctly mentioned. The local licensing forums can play an important role. Licensing boards will have to have regard to the forums’ views in deciding on policy. We hope that the forums will contribute strongly to a new framework that gives local people a strong voice and the ability to influence, for which many members argued today. My mind is open on Patrick Harvie’s specific point that the forums should meet in public. We will consider the specifics of how the forums will operate and come back to the committee on that.

Pauline McNeill rightly raised the broader issue of how the licences will interrelate. The proposed operating plan that we have put before Parliament strikes the balance that needs to be achieved between local policy and national guidance. The simplification of the current system of seven licences to a system of two licences is important. It will ensure that local licensing board policy determines the conditions that must be met. There is no reason why nightclubs cannot look closely at such conditions. Indeed, in our meetings with the
licensed trade, we have been very open to suggestions on how to take forward national or local conditions in order to address that point. I take Pauline McNeill’s point that there may be an impact on competition. However, I am sure that Parliament would assume that high-quality premises in city centres competing to attract customers form a competitive marketplace. That is how the system will operate.

On the broader point of grandfather rights and transitional arrangements, which many members highlighted, I very much appreciate the licensed trade’s concerns. I am not persuaded by Mr Crawford’s proposal for a two-tier system that would result from granting wholesale grandfather rights. However, we will carefully examine all the options and I fully intend to make an early announcement on the matter.

Bruce Crawford: I should remind the minister that the proposal for an interim licence for up to three years, which would allow businesses to put in additional finance and resources in order to make the required changes, was suggested not by me alone but by the Local Government and Transport Committee.

Tavish Scott: As I said, we will look closely at the matter. However, during the debate, it became clear that not only do we need to simplify arrangements in order to move into the new regime but we must not cut across other appropriate legislative and regulatory fields. I am sure that Mr Crawford would agree that it would be wrong for the Government to use the bill’s powers to take action over, for example, building control issues. We will not do so. It is clear that we need to strike a balance in that respect.

For the benefit of Margaret Smith and Paul Martin, I should reiterate that we are prepared to look further at the police’s role with regard to applications for premises licences. I accept Mr Martin’s point that the regime must be effective and appropriate. In fact, I have discussed that very issue with ACPOS and I know that we will come forward to Parliament with some proposals when the opportunity arises.

Bristow Muldoon: Under the proposal in England and Wales to introduce alcohol zones, licensees may contribute to the additional costs of policing. Does the minister intend to move in such a direction in Scotland?

Tavish Scott: We do not have any such plans and I do not want to give Bristow Muldoon any indication that we will move in that direction. We are always happy to consider examples of good practice in other parts of the United Kingdom. However, as I said in an earlier intervention, the framework and package of measures that we have proposed are appropriate to Scottish needs.

The role of LSOs was raised principally by the SNP. However, although I agreed with some of Fergus Ewing’s remarks, I thought that he talked utter nonsense on that matter. It is extraordinary for him to suggest that the Government should tell local authorities what they should do about particular appointments to their staff—

Members: He did not say that.

Tavish Scott: Yes, he did. I find it extraordinary that we would tell local authorities how many people they would have and how much they would be paid. We are not going to do that. The SNP can take an approach based on centralisation if it wants to, but the Executive will not.

In that regard, I believe that Mr Crawford’s amendment is wholly erroneous and does not address these serious issues. Indeed, its lodging has a slight element of opposition for opposition’s sake, which contrasts with the serious look at these issues that we have all taken this afternoon.

I know that Mr Ewing is a great talker, but I also thought that he was a great reader. However, he clearly has not read the bill. For his benefit, I will point out that the bill says that the role of LSOs includes providing “advice and guidance” and mediation; supervising compliance; issuing written warnings in cases in which licence conditions have been breached; and initiating a review of the licence by the board. I suggest that the SNP reads that particular section, because it will certainly help the SNP to understand these matters.

A number of us were somewhat taken aback by the Tory approach to binge drinking. Apparently binge drinking is okay for pensioners, but not for the rest of society. To be frank, I find that position extraordinary.

I reiterate, not least for Brian Adam’s benefit, that we will tackle binge drinking and irresponsible promotions. I said so in the debate and ministers have said so collectively over a considerable period of time. We will ban sales promotions for the off-sales and on-sales sectors, as we are clear that such promotions encourage more and quicker alcohol consumption at great cost to local people, local communities and society at large. It is right to take action on that. On that basis, I ask that Parliament reject the utterly pointless amendment from the Scottish National Party.
The Deputy Presiding Officer (Trish Godman): There are five questions to be put as a result of today's business. The first question is, that amendment S2M-2776.1, in the name of Bruce Crawford, which seeks to amend motion S2M-2776, in the name of Tom McCabe, on the general principles of the Licensing (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR
Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brownlee, Derek (South of Scotland) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McLetchie, David (Edinburgh Pentlands) (Con)
Mline, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
The Deputy Presiding Officer: The result of the division is: For 45, Against 64, Abstentions 7.

Amendment disagreed to.

The Deputy Presiding Officer: The next question is, that motion S2M-2776, in the name of Tom McCabe, that the Parliament agrees to the general principles of the Licensing (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Licensing (Scotland) Bill.
Dear Bristow

LICENSING (SCOTLAND) BILL 2005

In the Committee’s stage 1 report on the Licensing Bill you asked us to provide further information on a range of issues prior to stage 2. I am now in a position to respond.

Presumption against 24 Hour drinking

The Committee requested further views on the Executive’s policy to set a presumption against 24 hour drinking and asked whether a lower limit, such as 18 hours, might be more appropriate.

The Executive has always been clear that we do not support 24 hour drinking and that this is only acceptable in exceptional circumstances. The statutory presumption against 24 hour drinking serves to crystallise this policy as part of the new system. We do not agree that a lower limit would be appropriate.

The new licensing system is predicated on the basis that hours will be presented by the licensee as part of an operating plan and approved by Boards on the basis of fulfilling the licensing objectives and taking a decision that is right for the local area and local community. The new system would therefore abolish all forms of statutory permitted opening hours in favour of a more flexible locally based policy. This may mean that hours are longer or shorter than at present according to local circumstances. Although we were content to make clear on the face of the Bill that 24 hour opening should only take place in exceptional circumstances, we do not see a need to set a lower limit on opening hours nationally which, in essence, ought to be based on local circumstances and local decision making.

Petrol Station Forecourt Shops (Garages)

The Committee asked for further clarification on how the Executive intends to deliver policy on petrol stations to ensure that petrol stations in rural areas which also serve as the local shop would not be adversely affected.
The Executive will bring forward amendments to Section 115 of the Bill. The purpose of the amendments will be to provide that premises (or parts of premises) used as a garage will be able to be licensed for the sale of alcohol if they also sell groceries and people in the local community are (or are likely to become) reliant on the groceries or on the petrol. Licensing Boards will determine whether an application for a premises licence for a petrol station forecourt shop falls into this exemption.

**Entertainment Vehicles**

The Committee asked the Executive to investigate whether vehicles hired for entertainment purposes would be licensed under the new regime.

We have considered this further. We will ensure that, under the new system, moving vehicles, including entertainment vehicles, can be licensed through either a premises or occasional licence as appropriate. Suitable amendments will be brought forward at stage 2. The amendments will clarify that it is an offence to sell alcohol on a moving vehicle outwith the terms of a licence.

**Role, Remit and Accountability of Licensing Standards Officers (LSOs)**

The Committee requested more detailed information on the proposed role of LSOs, their functions and powers. The Committee also felt more clarity was needed around the accountability of LSOs. I am pleased to be able to report that, following a considerable amount of work over the summer recess by the newly established National Licensing Forum, a draft job description and personal specification has been drawn up. The Forum will meet to finalise these papers on Tuesday 13 September and will write to you as soon as possible with this information.

The costs of LSOs have been taken into account as part of our Fee Review.

**National Database for Licence Holders**

The Committee noted ACPOS concerns regarding the lack of a national database for personal licence holders. The Committee wished to encourage the establishment of a database and asked for further information about the feasibility of doing this, including the costs and difficulties involved.

We have undertaken some initial enquiries regarding the feasibility and cost of establishing a national database.

**Options**

**Option 1**

To establish a database covering both personal and premises licence holders.

This would involve development of a national licensing system capable of storing data for the new system to be accessed and operated by Boards themselves. It would also provide the basis for a central licensing web portal for Scotland and allow online applications for alcohol licences.

Establishing the system would require the transfer of data from those Local Authorities who are already using an online system. This should be straightforward for those Boards currently using the same system (around 60%). It would be more complicated to set up on the database those remaining Local Authorities who use a variety of other systems or who do not currently use online systems at
all. The system could be hosted within the Executive or externally. External hosting would be more expensive.

The set up costs of this option could be expected to be a minimum of around £125,000 with running costs of £50-60,000. Annual running costs would require to be funded by the licence fee but would be spread across all Local Authorities and amount to around £1500 - 2000 for each (for an Executive housed system).

Additional estimated costs would also arise for the Executive as follows:

Network components - £10,000
Cost of a Server and associated software - £10,000
Running costs to maintain server - £2000 annually
Integrating system and server into network - £5000
Shared IT Services Costs – running costs – unknown at present

Option 2

To establish a database allowing information to be managed by the Executive on licensed individuals whilst leaving each Local Authority with their own separate licensing system from whichever company they have contracted with. This system would require Licensing Board staff to liaise with the Executive system through software connections. This could be time consuming and potentially cumbersome although it would allow information to be centralised.

This option would also require to be hosted within the Executive or out-sourced. Set up costs could be expected to be around £100,000 with annual running costs of £20,000. Some of the above internal costs identified for the Executive would also apply.

Option 3

An e-mail driven secure data exchange could be developed to allow Boards to securely transfer information. Local authorities would be responsible for establishing their own licensing database. This solution is likely to be very expensive with a high level of ongoing support needed to ensure effective running of the system.

Option 1, to establish a central database covering personal and premises licence holders, is attractive in terms of the efficiency that can be delivered for the cost involved, although costings are estimated and should be treated cautiously.

The administrative advantages of a central database have never been in doubt, however, the Executive must also consider carefully how best to prioritise resources within existing budgets, not only in terms of the funding that would be involved but also in terms of the staff resources required to assist in the development of this type of project. A database would take at least a year to establish. In order for this to take place and be ready for use during the transitional period, work would have to begin soon. However, it would also be possible to establish a database at a later date.

I am prepared to actively consider further the benefits, resource and timing constraints of a national database as part of the new licensing regime. I will keep the Committee informed of any progress.
Door Stewards

The Committee asked us to consider whether the arrangements for regulation and training of door supervisors in England and Wales could be adapted in order to provide for the introduction of a similar scheme in Scotland to coincide with commencement of the Licensing Bill.

The Serious Organised Crime and Police Act 2005, which was subject to a Sewel Motion in the Parliament on 2 February, received Royal Assent on 7 April. Provisions within that Act will amend the Private Security Industry Act 2001 to extend the remit of the Security Industry Authority to include Scotland. The Security Industry Authority is currently developing its plans to introduce a licensing regime in Scotland and the regulation of door supervisors here is likely to begin in 2007. A GB wide approach to regulation will ensure affordable national licensing criteria/standards for each sector of the industry, including door supervisors, and will ensure bureaucracy is kept to a minimum.

Overprovision

The Committee did not request further information on overprovision. However, I am again pleased to tell you that the Forum has produced draft guidance on overprovision on which they will shortly be seeking wider views. I hope this will also be finalised at the meeting on Tuesday 13 September and sent to you as soon as possible for information.

Fees

Consultants have completed their report to the Executive on fees under the new licensing regime, which is now being considered by Ministers. The report will be published and I will write to the Committee during stage 2 with a copy of the report.

Appeals

The Committee requested that we keep them informed on our proposals for amendments to the Bill at stage 2 in relation to appeals.

Appeals (sections 122 and 123 of the Bill) are available to the sheriff principal in respect of all substantive decisions of the Licensing Board concerning premises licences, and references in detail by section to those decisions would be listed in a schedule to the Bill (section 122(1A) as inserted by amendment 75). The sheriff principal may delegate all appeals to a sheriff in his sheriff principal's place on a case-by-case basis or generally or he can hear all or some of them himself without delegation. These appeals are to be by stated case. Appeals in respect of personal licences go to the sheriff (not in the first instance the sheriff principal) and again those decisions which are appealable will be listed in the schedule.

There is provision for the sheriff principal at short notice to recall on a temporary basis pending the outcome of an appeal any decision of the Licensing Board which has resulted in the immediate suspension or revocation of a premises licence if he considers that this is appropriate on the balance of convenience test. This is designed to provide some judicial safeguard against premises being closed until an appeal is heard.
3rd Party Appeals

Under the 1976 Act, a very restricted range of people may object to a licence application. That restricted range of objectors may also choose to appeal if the decision goes against them and in favour of the applicant.

Under the new system we will be offering a third party right of appeal at a different stage in the process - where problems arise with a licence and the licence is reviewed. The appeal will be against the decision of the Board and made to the sheriff principal. This is in line with Gordon Nicholson’s suggestion that a senior judge should hear the appeals. This will ensure that communities can challenge the decision of a Board where they are concerned about the continued operation of the premises.

I hope this is helpful.

Kind Regards

George Lyon

GEORGE LYON