

LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 20 February 2007

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

5th Meeting 2007, Session 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

*Dr Sylvia Jackson (Stirling) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Michael McMahon (Hamilton North and Bellshill) (Lab)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Tommy Sheridan (Glasgow) (Sol)
Ms Maureen Watt (North East Scotland) (SNP)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (Sol)
Mr Bruce McFee (West of Scotland) (SNP)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Dr Elaine Murray (Dumfries) (Lab)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)

THE FOLLOWING GAVE EVIDENCE:

Gary Cox (Scottish Executive Finance and Central Services Department)
Ian Fairweather (Scottish Executive Finance and Central Services Department)
Tony Redhall (Scottish Executive Finance and Central Services Department)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Transport Committee

Tuesday 20 February 2007

[THE CONVENER *opened the meeting at 14:00*]

Licensing (Scotland) Act 2005: Draft Guidance for Licensing Boards and Local Authorities (SE/2007/9)

The Convener (Bristow Muldoon): I welcome members to today's meeting of the Local Government and Transport Committee. I also welcome the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, George Lyon MSP, who is with us for the first item on the agenda. George is supported by Gary Cox, who is the head of the alcohol, licensing and civic government branch of the Scottish Executive Finance and Central Services Department, and by Tony Rednall and Ian Fairweather, who are from the same branch.

We have received apologies from Tommy Sheridan and Maureen Watt. We also have a revised agenda, as the Minister for Transport is unable to attend for an item of subordinate legislation. We have had to reschedule that item for tomorrow, so I remind members that we have an additional committee meeting at 12 o'clock tomorrow.

Item 1 is the Licensing (Scotland) Act 2005: Draft Guidance for Licensing Boards and Local Authorities (SE/2007/9), which we will consider in the guise of a motion in the name of Tom McCabe that will be moved by George Lyon. We will come to the motion in due course, but first, following the procedure for an affirmative instrument, I ask George Lyon to make some introductory remarks, after which members will ask questions.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): It is a pleasure to be with you this afternoon. Members will recall the passage of the Licensing (Scotland) Act 2005, which we are making good progress on implementing. I will outline the process that we went through to get the guidance to this stage.

Our consultation period ran from October to December last year, and throughout it officials had a series of useful discussions with stakeholders, including licensing board clerks and a range of licensed trade organisations. The draft guidance

that is before the committee represents the outcome of that consultation process. We have taken on board a wide range of views that did not conflict with the fundamental principles of the 2005 act or the Executive's wider alcohol agenda.

The guidance has to be taken in context. The 2005 act and regulations set the framework for the new licensing system. Within that system, boards will have the flexibility to operate and take decisions in light of their particular circumstances. That is a fundamental principle of the act and it is important to maintain it. We are not producing guidance that tells boards exactly how to make the act work. Some people would like us to give boards a script and provide guidance that anticipates every scenario, but we are not going to do that. We want boards and, just as important, their clerks to be creative and innovative and to implement the act in a way that meets local needs and circumstances. There is always a danger that too prescriptive guidance would hinder that.

We are also not using guidance as an alternative to secondary legislation or as a lawyer's guide to the 2005 act. Over the next few weeks, we will ask the committee to agree a range of regulations and orders that set out various processes under the act. The guidance does not replicate the act and must not be seen as a substitute for it; it is simply intended to assist boards as they carry out their responsibilities under the act. I am confident that the draft that we have put before the committee will provide boards with information that will be useful to them as they implement the act, for example by developing policy statements, which is one of the first tasks that the new boards will perform.

I make it clear that we will always be open to suggestions from people who are directly involved in the licensing process about how the guidance might be revised in future. Any revised or new guidance will, of course, be laid before the Parliament, as the 2005 act requires. We will also need to consider whether any further guidance should be developed in respect of regulations that the committee still has to consider. Those regulations will include key issues such as transitional arrangements and the format of application forms and operating plans, which are central to the administration of the new system. However, I do not want the draft guidance to pre-empt the committee's consideration of the regulations, so further work may be needed if Parliament agrees to them.

Finally, although the guidance is not secondary legislation and is not a legal document, I thank Sylvia Jackson and the Subordinate Legislation Committee for their scrutiny of it. We were happy to make some drafting amendments as a result of representations that the Subordinate Legislation

Committee received from the clerk to one of the licensing boards. Those changes are reflected in the draft that is before the committee today.

I hope that the committee will agree that the guidance will be useful to licensing boards but will not limit their flexibility under the 2005 act. I ask members to note that the guidance will be updated and amended as we implement the act and as boards identify new issues that need to be addressed.

As noted previously, any revised guidance that is issued under section 142 of the Licensing (Scotland) Act 2005 will be laid before Parliament. Meanwhile, I invite the committee to approve the current draft. I am happy to answer any questions on the guidance that is before members today.

The Convener: Thank you.

I should draw members' attention to an issue that the minister mentioned, which is that the Subordinate Legislation Committee has been in correspondence with the Executive on a number of points in relation to the guidance. The Subordinate Legislation Committee agreed today that it has no further points to raise on the guidance, but it asks that our attention be drawn to the correspondence between it and the Executive. Copies of the correspondence were e-mailed to members earlier today and hard copies are on their desks for their perusal.

We will move to questions.

Paul Martin (Glasgow Springburn) (Lab): The minister will be aware that the committee passed an amendment on a requirement for new applicants to provide antisocial behaviour reports for premises. I seek an assurance from the minister that, although authorities have expressed some concerns about that requirement, the Executive will deliver on the amendment that the committee passed.

George Lyon: I assure Mr Martin that it is still our intention to bring into effect the legislative provision from that amendment, which requires that the police provide antisocial behaviour reports with regard to licences.

David McLetchie (Edinburgh Pentlands) (Con): Committee members have been circulated with a commentary on the guidance, which was produced by the Scottish Beer and Pub Association. Has the minister seen it and read some of the SBPA's observations on the guidance?

George Lyon: I am not aware of that commentary, but we are happy to try to respond to any questions that you have. I should point out that the trade was fully consulted during the drafting of the guidance.

David McLetchie: I understand that, but some of the points in the commentary seem to arise from confusion about the status of the statute, the regulations that are made under the statute and the guidance on what they are meant to achieve. I understand from your opening remarks that you are emphasising that the guidance is guidance and it does not in any way, shape or form vary, enhance or diminish what has been enacted by Parliament in the 2005 act and in the regulations made thereunder.

George Lyon: Yes. I will explain the process. In response to the committee's concern about the need to see the guidance at an early stage, it was agreed during the passage of the bill to incorporate within it a requirement that draft guidance should be brought before the committee in the form of a statutory affirmative instrument and that that would happen prior to the regulations being passed by the committee. Therefore, the committee has before it today the draft guidance in the form of a statutory instrument, which we are asking the committee to pass. Meanwhile, the committee still has to see the regulations that will underpin some of the guidance, and those regulations are due to be negative instruments. The reason for that is that we need to get the guidance in place to allow local authorities to set up the new licensing boards immediately after the election and to begin to draft their policy statements so that they can go to consultation.

As I said in my opening statement, there may be a need to revisit and adjust the guidance in the light of the regulations once they are passed, because the final details of some aspects of the regulations are still to be agreed before they come to the committee. The guidance is a work in progress, in that some of it might need to be revisited as the regulations implement the full text of the act.

David McLetchie: Thank you for that explanation. The SBPA commentary that has been circulated to members suggests that licensing boards can add to the categories of what constitutes an irresponsible drinks promotion.

George Lyon: I do not think that that is correct at all.

David McLetchie: So that is not the case.

George Lyon: No. Promotion is defined in the 2005 act.

David McLetchie: In other words, determining what is irresponsible is simply a matter of interpreting what is defined in regulations. If a pub's promotion activity does not fall under that definition, that is the end of the matter—it is not an irresponsible promotion.

George Lyon: Yes, that is correct.

David McLetchie: A related matter is the timescale for considering premises licence applications. Again, the issue is about what is in regulations, what is in law and what is in guidance. In the light of paragraph 319 of the draft guidance, the SBPA says that it is intended that licensing boards will have up to six months to reach a decision on a licence application. The SBPA suggests that that is too long, given that the current legal position is that a decision must be made in five weeks. Am I right in thinking that the 2005 act already specifies a six-month timescale and that the period is six months because that is what the law says rather than what the guidance says?

Tony Rednall (Scottish Executive Finance and Central Services Department): No. There is slight confusion. The six-month timescale relates to how licensing boards will deal with licence applications during the transition period, which will be covered in the regulations. The plan is that the boards will consider applications in blocks and will have six months to get through each block. There has been nothing to specify how long a board will have to consider an application. If we were to make such a specification, we would do so in regulations.

David McLetchie: So the commentary that we have received on what is in the guidance really contains suggestions about ways in which the regulations should differ from the guidance.

Tony Rednall: Yes.

David McLetchie: In the light of the SBPA's comments about timetabling and the six-month period to which it objects and believes that there is a better alternative, is it possible for us to have an input on adjusting it? I do not know how open or set your minds are on the six-month rule.

George Lyon: That is always possible until arrangements are finalised.

David McLetchie: Yes, I know, but we want to know how set in your ways you are.

George Lyon: There seems to be some confusion about what the six-month period relates to. It relates not to the consideration of individual licence applications, but to the consideration of all the licences that come up for renewal in a specific timescale. As you know, the current cycle is three years for renewals and one year for regular extensions. We are suggesting that, over the transitional period, all the licence applications that fall for consideration in a particular six-month period should be dealt with in a block. Within that six-month period, how long it takes for each licence application to be considered will be up to the boards, but they will have a cut-off to ensure that they get through all the applications in time. If we did not have such deadlines, there would be a

danger of slippage and of missing the date when all the new licences go live—there will be a single date on which that happens. Licences under the Licensing (Scotland) Act 1976 will run up until then.

We have divided the transitional period into six-month blocks in an effort to ensure that the process is carried out timeously and to help to inform boards about the resources that they will need to meet the timescale. That is the rationale behind the proposal, and I think that our approach is correct. The six-month period does not relate to how long it will take licensing boards to determine individual licence applications.

14:15

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): In his answer to Mr McLetchie, the minister offered some comfort on the process, but Stewart Ferguson of the city of Glasgow licensing board has raised with us a number of points on the draft guidance that I would like to put to him.

First, Mr Ferguson makes the point that

“parts of the draft Guidance”

that we have before us

“were not contained within the version that went out to consultation.”

He refers to

“the detailed guidance on overprovision which was originally drafted by Jack Cummins in his capacity as a member of the National Licensing Forum”

and goes on to say:

“The guidance on overprovision was initially drafted prior to the decision having been made to defer the implementation of section 7 of the Act (The duty to assess overprovision)”.

He then raises a query about page 22 of the draft guidance which, under the heading “Arrangements for transition”, states:

“Step1—Boards should determine localities or a locality in their area based on their local knowledge and understanding of their areas and in consultation with their Local Licensing Forum where they are aware of problems caused by the density of licensed premises”.

Mr Ferguson states that that

“appears to be placing a duty on Licensing Boards to proactively assess overprovision despite the implementation of that particular requirement of the 2005 Act having been delayed. Steps 2 and 3 as set out on page 22 also strongly indicate that Boards are to be subject to a duty to proactively assess overprovision during transition despite the assurances given by the Scottish Executive to the contrary.”

I ask the minister to comment on that observation.

George Lyon: I am not sure whether those are the original concerns that Mr Ferguson raised with

the Subordinate Legislation Committee or points that he has raised subsequently. Can you clarify that for me, Mr Ewing?

The Convener: As we have the convener of the Subordinate Legislation Committee with us today, we should take advantage of that. Will you clarify that for us, Sylvia?

Dr Sylvia Jackson (Stirling) (Lab): It is my understanding that that is the letter that we dealt with at the Subordinate Legislation Committee.

George Lyon: Okay. I will ask my officials to respond. We are just a little disappointed that Mr Ferguson, who was involved in the original consultation—indeed, he had a meeting just a week or 10 days ago with officials—did not raise those concerns with us at the time. Nevertheless, we have responded to the Subordinate Legislation Committee. I will pass over to Ian Fairweather to respond.

Ian Fairweather (Scottish Executive Finance and Central Services Department): Just to clarify, licensing boards will not be under a duty. There will be no obligation on them with regard to overprovision during transition; the matter is entirely at their discretion. It is an operational matter for them whether or not to apply overprovision as grounds for refusal. I give the committee and Mr Ferguson the assurance that no duty is being placed on boards—none at all.

Fergus Ewing: I am really just putting this on the record, simply because the matter was raised by a reputable person. I am not raising it because I have an axe to grind—I have enough axes to grind already.

George Lyon: If it is okay, Mr Ewing, Gary Cox wants to add one further point.

Gary Cox (Scottish Executive Finance and Central Services Department): On Mr Ewing's point on the status of the draft guidance, it is true that the full guidance on overprovision was not in the version of the guidance that was issued for consultation in October. However, it was developed earlier in 2006 by the members of the national licensing forum. It was put into the guidance that the committee has before it today as a direct result of the consultation process, during which a number of people told us that they would like the full overprovision guidance to be inserted along with a description of the transition arrangements that should apply. We tried to make clear in the guidance the full overprovision guidance that will apply when section 7 is brought into force and the guidance on the arrangements that should apply during transition. We did that as a result of the consultation process, at the request of people.

Fergus Ewing: I am grateful for that clarification. I am conscious that this matter could

lead to extremely expensive litigation in many areas. Clarifying the point is useful, which is what we are doing.

Mr Ferguson also raises the point that the draft guidance contains provisions which mean, or at least envisage,

“that a member of the Licensing Board can also be a member of the new Local Licensing Forum.”

Is that the case? That refers to pages 73 to 78 of the draft guidance. Mr Ferguson argues that such a possibility would prejudice the independence of the forum.

Ian Fairweather: The provisions were put in at the request of several respondents and to raise the issue for boards to consider. Again, there is no obligation or requirement on boards to put a member on the forum—it is entirely a decision for them to make if they feel that the circumstances merit it and it would help working relationships. We are not directing boards; it is entirely a matter for them to consider.

Fergus Ewing: I am no expert, but I would have thought that the forum should be independent of the board, therefore in the interests of the forum fulfilling its purpose, which Mr Ferguson states is to

“keep under review the operation of the licensing system in the area and to give advice and recommendations to the Licensing Board”,

people should not be members of both.

Ian Fairweather: The forum is seen as an independent check on licensing boards, but I stress again that the provisions are guidance, not recommendations or directions. We added the provisions in response to the many contributors to the consultation who thought that, if a board wanted to pursue that, it would be a good idea. However, the boards are certainly not being directed or pressured to do it.

Fergus Ewing: So the Scottish Executive does not believe that having a person who is a member of both the forum and the board would constitute a conflict.

George Lyon: It will be for individual boards to consider. It may be that they will wish to send along an observer. The provisions basically allow for liaison between boards and forums if they consider that it is appropriate, but it will be for boards to make the decision.

Fergus Ewing: Stewart Ferguson also asks about licensing hours, which are covered on page 12 of the guidance. He says that the guidance states:

“consideration should be given as to ways in which large numbers of customers leaving premises simultaneously can be properly managed.”

He also comments:

"There is however no guidance on how this may be achieved. The Board cannot arbitrarily differentiate between premises as to the hours of operation to achieve 'staggered' closing times—so how is it expected that this can be done?"

That is a pertinent observation.

George Lyon: Again, that is guidance to boards. The policy on when closing times will be in particular areas is an operational matter for them. As we can see in various towns and cities, different closing times for different establishments operate already, and in some areas there is a lock down, under which people have to enter a public house before a certain time and they cannot move around the town afterwards. Those are all matters that boards will come to a view on once they have stated their policy.

Fergus Ewing: Right. I think that Mr Ferguson was saying just that it would have been helpful if some guidance had been indicated.

George Lyon: It is a question of balance. As the committee will remember, the Nicholson committee and the Licensing (Scotland) Act 2005 were about ensuring local flexibility to take account of local needs. Does Edinburgh know best or should the flexibility lie locally? I guess that what is suitable for Glasgow and other major cities does not necessarily suit the requirements in some of our rural towns and villages, so we need flexibility for boards to come to their own view.

Gary Cox: In the longer term, if Glasgow or any other board came up with innovative ideas for handling crowds or opening hours, we would be happy to consider and share them with other licensing boards. That area may develop over time, and there may be a need to update the guidance in the future. We would be grateful if, when good practice is identified by licensing boards, they shared it with their colleagues and us. We would be happy to cascade it.

Fergus Ewing: Fair enough—I do not vehemently disagree with any of that.

Lastly from Mr Ferguson's list, which I am selecting from rather than quoting in full as we have other things to do, he states that an error has been made on page 73, where the guidance on local licensing forums erroneously states:

"The Act requires that local Licensing Standards Officers must also be members of the Forum".

He states that the 2005 act provides that only one LSO must be on the forum. Is that correct?

Gary Cox: Yes, that is correct. I think that the word "a" is missing from the paragraph. We would be happy to change that before it is issued to licensing boards. The 2005 act requires a licensing standards officer to be a member of the forum.

Fergus Ewing: Thank you for that clarification.

Motion moved,

That the Local Government and Transport Committee recommends that the Licensing (Scotland) Act 2005: Draft Guidance for Licensing Boards and Local Authorities (SE/2007/9) be approved.—[George Lyon.]

Motion agreed to.

The Convener: I thank the minister and his officials.

Subordinate Legislation

Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2007 (SSI 2007/23)

Licensing Register (Scotland) Regulations 2007 (SSI 2007/33)

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Non Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2007 (SSI 2007/36)

14:25

The Convener: We move on to agenda item 2. No members have raised any points on any of the statutory instruments, the Subordinate Legislation Committee has not drawn anything to the committee's attention and no motions to annul have been lodged. If no member wants to comment, I intend to consider the instruments together.

Are members agreed that we have nothing to report on the instruments?

Members *indicated agreement.*

The Convener: That brings us to the end of today's meeting. I remind members that we have an additional meeting tomorrow at 12 o'clock to consider a motion on secondary legislation that is to be moved by the Minister for Transport. That will be in committee room 3.

For information, I should also advise members that there will be no committee meeting next Tuesday afternoon, so they can all get busy with other duties.

Meeting closed at 14:27.

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