

CITY OF GLASGOW LICENSING BOARD

RESPONSE TO CONSULTATION BY RICHARD SIMPSON MSP & GRAEME PEARSON MSP

Introduction

The City of Glasgow Licensing Board is constituted as an independent regulatory body by virtue of Section 5 of the Licensing (Scotland) Act 2005. Section 1(2) of Schedule 1 of the Licensing (Scotland) Act 2005 provides that membership of the Licensing Board should be formed from the current Elected Members of the Council. The main function of the Board is to regulate premises that sell alcohol to the public. The Licensing Board welcomes the opportunity to comment on Dr Richard Simpson MSP and Graeme Pearson MSP's consultation which is being launched in connection with a draft proposal of The Alcohol (Public Health and Criminal Justice) (Scotland) Bill. The Board recognises that alcohol misuse is a serious and widespread problem throughout Scotland and is committed to working with other interested stakeholders in order to try and tackle the social, cultural and health problems associated with alcohol misuse.

Q1) Do you think the further restriction on quantity discounting proposed would be beneficial? What disadvantages might there be? Do you think there is a case for going further?

The Licensing Board is of the view that the further restriction on quantity discounting proposed would be beneficial. It would seem that the wording of section 2 of the Alcohol etc. (Scotland) Act 2010 acts as a deterrent to premises selling items individually as opposed to being part of a larger package as the provision only applies where all of the alcoholic products are also sold individually. This would seem to have the perverse effect of encouraging licence holders to sell larger packages of alcohol rather than individual smaller units, thereby encouraging a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume, which is prohibited in terms of paragraph 8(2)(e) of Schedule 3 to the Licensing (Scotland) Act 2005. The Board recognises that the provisions in relation to quantity discounts in the Alcohol etc. (Scotland) Act 2010 create a significant loophole which should be closed.

Q2) Do you believe that Ministers should be required to issue guidance on these two licensing objectives? [Protecting and Improving Public Health and Protecting Children from Harm]

The Licensing Board would welcome the issuing of guidance on all five of the licensing objectives as set out in section 4 of the Licensing (Scotland) Act 2005. The Board would like guidance on the five objectives particularly in light of recent case law such as *Brightcrew Ltd v City of Glasgow Licensing Board* 2011 CSIH 46. In this case it was held that the five licensing objectives set out in the 2005 Act do not “empower a licensing board to insist on matters which, while perhaps unquestionably desirable in that sense, are nevertheless not linked to the sale of alcohol.” The outcome of this ruling is that the Board are only able to apply the objectives to matters which relate directly to the sale of alcohol. This means that the Board are unable to, for example, deal with issues relating to noise or nuisance at licensed premises by applying the licensing objectives as this does not relate directly to the sale of alcohol. The Board would therefore welcome guidance on how to tackle this problem. In the view of the Board the issuing of guidance on all licensing objectives would also assist in addressing inconsistencies in approach by Scotland’s various licensing boards. The Licensing Board can only work within the legal powers it has been given under the Licensing (Scotland) Act 2005 and all actions of the Board are open to legal challenge. With this in mind, the Board would support the issuing of guidance on all the objectives to assist Board members in making legally sound decisions and, it is hoped, this would lead to fewer challenges being made against individual Licensing Boards.

Q3) Do you believe that Ministers should be required to report to the Parliament once per session, and what should such a report be required to cover?

It is the view of the Board that Ministers should be required to report to the Parliament once per session. The report should cover how the licensing objectives are being applied by each licensing board in order to achieve an appropriate level of consistency across Scotland on the implementation of licensing policy. It is the view of the Board that this would also allow Ministers

an opportunity to see how the law in this area is evolving and the impact which legislation has on a practical level.

Q4) Do you believe that the proposed restrictions on advertising are proportionate or necessary?

The Glasgow Board has no comments to make.

Q5) Are there further measures you feel should be introduced?

The Glasgow Board has no comments to make.

Q6) Do you believe that there should be restrictions on pre-mixed caffeinated alcohol products? If so do you believe the proposed caffeine limit of 150mg/litre on pre-mixed products is appropriate?

The Glasgow Board has no comments to make.

Q7) Is there a role for further alcohol education and public information campaigns in changing alcohol culture?

The Glasgow Board has no comments to make.

Q8) Would it be beneficial for Ministers to be made directly accountable to the Parliament for their policy in this area, as proposed?

The Glasgow Board has no comments to make.

Q9) Do you support a ban on Licensing Boards requiring off-licences to restrict sales on age-grounds alone, or are there circumstances where this could be justifiable?

The Board supports a ban on Licensing Boards requiring off-licences to restrict sales on age-grounds alone. The Board is of the view that such measures are unfair to those under 21 who drink responsibly. The Board considers that there are other more suitable mechanisms within licensing

legislation to deal with licence holders who supply alcohol to under-age drinkers.

Q10) Do you believe that community neighbours should be consulted and their views taken into account when licences are being renewed or extended or when special licences are being issued?

The Board is of the view that the current model, under the 2005 Act, which removes the requirement for renewals is better than the old model which required licences to be renewed every three years. The current mechanism for the review of premises licences is an improvement on relying solely on the fixed term process. Community groups and members of the public can at any time make an application to have a licence reviewed. The Board is of the view that the Scottish Government should publish guidance in order to ensure that the public are informed as to how to make review applications to licensing boards. The Board is also of the view that the Scottish Government should publish guidance in order to assure members of the public that it is ultimately the decision of the Board as to whether sanction should be given for a review; the Board is the body which would be subject to litigation in the event of an appeal, not the review applicant.

Q11) Do you believe that the New Zealand model is an appropriate one to emulate, if not what, changes should be made?

As stated previously, the Board is of the view that the current model, under the 2005 Act, which removes the requirement for renewals is better than the old model which required licences to be renewed every three years. The current mechanism for the review of premises licences is an improvement on relying solely on the fixed term process. In the case of occasional licences and applications for extended hours, given the volume of applications, timescales and the licensing authority's resources, it would be challenging on a practical level for the licensing board to consult with members of the community beyond the current advertising requirements as set out in the 2005 Act.

Q12) Do you believe that there is a role for a statutory National Licensing Forum in addition to the existing local forums? If so:

- Should it be funded through licensing fees or central Scottish Government funding?**
- What would its membership be, and who would appoint them?**
- To whom would it be accountable?**
- What would its functions be?**

The Board would welcome a statutory National Licensing Forum in principle. The Board has a concern that Scottish licensing policy is currently being developed without expert input. The Board would welcome the establishment of an expert body to develop policy and to ensure a broad consistency of approach across all licensing authorities in Scotland. However, the Board is of the view that such a body should not be weighted towards any particular organisation e.g. the NHS or the licensing trade. The Board feels that more detailed consideration of the issue is required before comments can be made on matters such as funding for such a body or its accountability.

Q13) Is there sufficient evidence to justify legislation allowing Licensing Boards to make participation in a bottle tagging scheme a licence condition, or are current voluntary arrangements adequate?

The Licensing Board feels that it would only be able to introduce such schemes when appropriate provisions are brought into force by the Scottish Ministers. Specific guidance from the Scottish Ministers is required stating that licensing boards have the power to make participation in a bottle tagging scheme a potential licence condition. The Board is of the view that licensing boards should be able to make participation in a bottle tagging scheme a licence condition, rather than by voluntary arrangement. The Board feels that it can only compel full participation by all relevant licensed premises in a bottle tagging scheme if there is a statutory basis for varying licence conditions in this way. The Scottish Ministers would be required to specifically detail the power to make participation in a bottle tagging scheme a potential licence condition as a prescribed matter in respect of the powers

conferred to the Licensing Board under section 10 of the Alcohol etc (Scotland) Act 2010. The Board have concerns about the mechanisms by which new conditions in licensing policy can be used to have effect on existing licence holders.

Q14) Should Fine Diversion be made available, on a statutory basis, throughout Scotland, if the further pilot is successful?

The Glasgow Board has no comments to make.

Q15) Do you believe that Arrest Referral schemes for Alcohol (as well as Drugs) should be a statutory requirement within each Community Justice Authority area?

The Glasgow Board has no comments to make.

Q16) Should drinking banning orders be introduced in Scotland? If so should they be piloted in one Sheriffdom?

The Glasgow Board has no comments to make.

Q17) Do you believe extending DTTOs to become ADTTOs would add value to the existing range of disposal? What differences of context between drugs and alcohol would need to be taken into account?

The Glasgow Board has no comments to make.

Q18) Do you believe that notifying a GP about a patient's conviction for an alcohol-related offence would be beneficial? Should it apply only in cases of conviction, or in other circumstances as well?

The Glasgow Board has no comments to make.

General Questions

- Q1) Do you support the general aim of the proposed Bill? (as outlined above). Please indicate “yes/no/undecided” and explain the reasons for your response.**

The Licensing Board supports the general aim of the proposed Bill. The Licensing Board recognises that alcohol misuse is a serious and widespread problem throughout Scotland. The Board considers that direct and effective action is required in order to tackle cultural attitudes to alcohol across the country.

- Q2) Are there further legislative (or non-legislative) changes that you would recommend, beyond those outlined in this consultation, in order to further its general aims of tackling Scotland’s culture of excessive alcohol consumption?**

The Licensing Board has raised concerns in previous consultation responses, and directly with the Cabinet Secretary for Health and Justice, that under the 2005 Act it has no discretion to refuse to grant an occasional licence (for example for a large event in connection with a national sporting event) in the absence of an adverse report from the Police or Licensing Standards Officers. There is therefore a slight irrationality in providing licensing authorities with the power to charge a fee for occasional licence events where they believe there may be some adverse impact but not afford the Licensing Board the power to refuse to grant the application in the first place. This highlights a lacuna in the regulatory powers of licensing boards in implementing the licensing objectives.

- Q3) What is your assessment of the likely financial implications (if any) of the proposed Bill to you or your organisation? What (if any) other significant financial implications are likely to arise?**

As stated previously, in the case of occasional licences and applications for extended hours, given the volume of applications and timescales, there could be a financial impact on the licensing authority for the funding of resources if

the licensing board were required to consult with members of the community beyond the current advertising requirements as set out in the 2005 Act.

Q4) Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

The Glasgow Board has no comments to make.