



**MINUTES OF THE MEETING OF THE  
EAST LoTHIAN LOCAL LICENSING FORUM**

**2**

**WEDNESDAY 5<sup>TH</sup> DECEMBER 2012  
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

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**Forum Members Present:** Stuart Baxter  
John Boyce  
Dave Dickson (Chair)  
Bill Duncan  
Richard Foley  
David Forrest  
Rudi Fruzynski  
Pat Hanson (Secretary)  
Richard Ross

**Council Officials Present:** None

**Visitors Present:** George Hood (RASP)

**Apologies:** Bernard Harkins  
Heather Bowsher  
Simon Broadhurst  
Jim Goodfellow

*George Hood was welcomed to the meeting as a guest from RASP Pubwatch Scheme*

## 1. MINUTES OF THE MEETING HELD ON 5<sup>th</sup> SEPTEMBER 2012

The minutes of the Forum meeting held on 5<sup>th</sup> September 2012 were presented for approval. Rudi Fruzynski pointed out that these minutes, and other papers, had not been circulated 14 days prior to the meeting, as required by the new Constitution. The Secretary apologised and said that he would discuss and implement new deadlines with the appropriate Council staff.

### Decision

The Forum agreed to approve the minutes as a correct record.

## 2. MATTERS ARISING FROM THE MINUTES

- i Min 5(i) The Secretary said that he had not so far been able to find a suitable contact in the Rating Department with whom to pursue the issue of rating for 'open licence' premises

### Decision

This action would be carried forward by the Chair and Secretary

- ii Min 3 John Boyce picked up on some of the issues arising from previous papers on alcohol-related hospital admissions in East Lothian. He said that he would like to re-present some of the data in map form and also explained further about the 'intermediate zones' used in the analysis.

### Decision

John Boyce would be asked to re-present this material at a future Forum meeting.

## 3. ALCOHOL FOCUS SCOTLAND

- i Report on National Licensing Conference, September 2012 The Chair and Secretary introduced the paper which had been previously circulated. The Chair said that personally he was disappointed with the Conference, which had concentrated on the role of Licensing Boards and had had little to say about Local Licensing Forums. The Conference Chair, Lesley Riddoch, had also seemed too keen to pursue her own agenda. The Secretary highlighted the positive views about on-trade management given by a senior police officer from Strathclyde. The Chair also commented on discussions about the different views on 'overprovision' across Scotland. Members suggested that the input of local politicians was the cause of this. The paper was noted.

- ii 'The Cost of Alcohol in East Lothian' The Secretary explained that this report, and similar analyses for all the other Scottish UAs, had been launched at the September Conference referred to previously.

There was a wide-ranging discussion about the figures estimated in the paper. John Boyce said that he thought they were solid enough estimates and said that the relevant total costs of £26 million needed to be substantially reduced. Other members thought that domestic abuse lay at the root of the large 'crime' costs shown and queried the ready supply of cheap supermarket alcohol as an influence. Further discussion covered referrals to support organisations, trends in alcohol consumption

and alcohol consumption amongst young people. John Boyce stressed that health professionals were not prohibitionist but really wanted to see alcohol consumption levels decreasing. The report was noted.

iii eFocus October and November 2012 These Newsletters, additional copies of which were tabled, were noted. The Secretary said that he would check on email contacts with Alcohol Focus Scotland.

#### **4. CHIEF CONSTABLE'S REPORT SEPTEMBER 2012**

In the absence of any police representatives the Secretary introduced this report, which had been previously circulated. He drew attention to the number of test purchases made and the number of licences (pubs, clubs and off-sales) extant in total.

Members discussed the report and in particular their experiences on the ground with underage problems, Pubwatch exclusions, intervention policies, decisions on when to call the police to incidents etc.

Members also discussed Pubwatch scheme membership. Rudi Fruzynski drew attention to the free registration scheme for Pubwatches. Ricky Ross suggested that the Licensing Board should take cognisance of which establishments were not members of the appropriate schemes; overall, members were keen that the Licensing Board should recommend to all premises licence holders that they be active members of the local Pubwatch scheme where it existed. This should also be incorporated in the revised Statement of Licensing Policy (see next minute). The Chief Constable's report was noted.

#### **Decision**

Recommend to the Licensing board that the above encouragement to participate in Pubwatch schemes should be implemented and incorporated in policy.

#### **5. FORTHCOMING REVIEW OF THE LICENSING BOARD'S STATEMENT OF LICENSING POLICY**

Rudi Fruzynski reported that, in relation to the Forum's previous discussions, there had in fact been no meetings of the Board's Policy Group since the May 2012 elections, therefore the 'big issues' had not yet been discussed. Forum members confirmed that they were ready to make a substantial input to this review and looked forward to hearing details of the relevant timetable.

#### **6. JOINT MEETING BETWEEN THE LICENSING FORUM AND THE LICENSING BOARD**

The Secretary confirmed that he had spoken to Kirsty McNeill and that a date in mid to late January was being sought for this meeting. Rudi Fruzynski pointed out that Licensing Boards were to provide a statement on overprovision, which could be considered in their review and particularly in these joint discussions with the Forum. There was little guidance in the Act on this matter. The position was noted.

#### **7. POLICE REPORT**

A brief written report by Heather Bowsher was tabled and considered by members. Rudi Fruzynski said that about 5% of police incidents on licensed premises had also been attended by himself. The number of occasional licences issued was about on a par with previous years.

Test purchasing remained at a low level, with some difficulties being found in retaining and training a small group of young people. The report was noted.

## **8. LICENSING STANDARDS OFFICER'S REPORT**

Rudi Fruzynski introduced his report and gave a summary of the licensing business dealt with at recent Licensing Board meetings. Further conversions to 'open licences' e.g. at Prestonpans Labour Club had been approved, together with seasonal licence variations including the general 2am extension which would be available from 14<sup>th</sup> December 2012 until 5<sup>th</sup> January 2013. There had been a small number of complaints about noise issues. Quick intervention was usually sought in such cases. The report was noted with thanks.

## **9. DATES OF FUTURE MEETINGS**

It was pointed out by the Secretary (on behalf of the Police representatives and Jim Goodfellow), and others, that Wednesdays were not the best evenings for meetings. Members agreed to switch to Tuesdays.

### **Decision**

Subject to meeting room availability, the following Tuesday evening meetings should be arranged by the Secretary in conjunction with the Council for 2013: 5<sup>th</sup> March; 4<sup>th</sup> June; 3<sup>rd</sup> September; 3<sup>rd</sup> December.

## **10. ANY OTHER BUSINESS**

Richard Foley circulated posters relating to a new MELDAP campaign highlighting parental influence on young people's drinking etc. Members discussed some of the related issues further.

Ricky Ross drew attention to the need for research into the relative proportions of on-sales and off-sales e.g. in the East Lothian area as potentially useful background information when looking at alcohol-related issues.

The Secretary said that he would report to the next meeting on the issue of obtaining Council support for further efforts to recruit Forum members e.g. through leaflets or advertising.

*There being no further business, the meeting closed at 2105 hours after the Chair had given seasonal good wishes to all members.*

## Scottish Certificate for Personal Licence Holders

This update has been produced to assist Awarding Bodies, educators and training centres in responding to enquiries about personal licence holder certificates issued prior to 01 September 2009.

### Personal Licence Holder Qualification

When selling alcohol on licensed premises, the sale must be authorised by a personal licence holder. Furthermore, the premises manager must possess a personal licence. In many premises, other members of staff also attain personal licence holder qualifications so that they can authorise sales in the absence of the premises manager.

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The holder of a personal licence must undergo refresher training to ensure their licence remains valid, and they must produce evidence that they have undergone this refresher course, to the licensing board that they originally produced their personal licence holder certificate to, within 5 years of achieving their personal licence (with a three month grace period).

- **If licence holders do not renew their personal licences within this time period, their personal licences will be revoked.**
- **If the premises manager has their personal licence revoked then the sale of alcohol will no longer be permitted in their premises.**
- **If personal licence holders who are not premises managers, have their licences revoked, they will no longer be allowed to authorise sales in the absence of the premises manager.**

### Transition period

The personal licence holder qualification came into effect on 01 September 2009, however a number of personal licence holders were trained, certificated and issued with personal licences prior to this, during the transitional period 01 March 2008 - 31<sup>st</sup> August 2009. Amongst this group, there is some question over exactly when their 5 year period begins – is it from the date that their licence was issued, which could be as early as 2008, or is it the date the licence came into effect – 01 Sept 2009?

### Clarification of the issue

The Scottish Government will be issuing guidance to Licensing Boards to ensure that **all personal licence holder qualifications achieved in this transition period 01 March 2008 - 31<sup>st</sup> August 2009 will be treated as being issued on 01 September 2009.**

Therefore, all those who gained their personal licence holder qualification between 01 March 2008 and 01 Sept 2009, will have to undergo refresher training, and submit evidence of this to their licensing board before 01 December 2014.

Personal licence holders who gained this qualification after 01 September will have until 5 years (and 3 months) of this later date i.e. if a personal licence is issued on, for example 01 June 2012, then the proof that the refresher training has been carried out must be submitted to the same licensing board before 01 September 2017.

**If personal licence holders do not submit details of the refresher course to their licensing board before the deadline, their personal licences will be revoked.**

#### Upcoming work on the personal licence holder qualification

People 1st, the Sector Skills Council for Hospitality, Travel, Passenger Transport and Tourism, has been working with the Scottish Government to update the Personal Licence Holder qualification and help devise the refresher course. This work is coming to a conclusion and the outputs will be announced in late February 2013.

**From:** [patrhanson@aol.com](mailto:patrhanson@aol.com)  
**To:** [Currie, Fiona](#)  
**Subject:** Fwd: Personal Licence Holder - Launch of Refresher Training - (4 March 2013, Queen Margaret University)  
**Date:** 13 February 2013 10:25:49  
**Attachments:** [image001.jpg](#)  
[image37ba18.GIF](#)

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Hi Fiona

This covers a launch which takes place on 4th March ie 1 day before the next Forum meeting.

Best wishes

Pat

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-----Original Message-----

**From:** Lorraine Birrell <[lorraine.birrell@people1st.co.uk](mailto:lorraine.birrell@people1st.co.uk)>  
**Sent:** Thu, 17 Jan 2013 15:09  
**Subject:** Personal Licence Holder - Launch of Refresher Training - (4 March 2013, Queen Margaret University)

## Personal Licence Holder – Launch of Refresher Training

Sign up for your complimentary place

### Dear Industry Colleague,

People 1st were commissioned by the Scottish Government in March 2012 to undertake a review of the personal licence holder qualifications in Scotland and to consider how the refresher training required by the Licensing (Scotland) Act should be implemented. Over the last year, People 1<sup>st</sup>, working with Queen Margaret University, have facilitated a very successful collaborative partnership between public and private stakeholders to take forward this major piece of work.

This project has now reached a conclusion, and the outcomes of this work are being launched on **Monday 4<sup>th</sup> March 2013 at Queen Margaret University, Edinburgh, commencing at 2.00 pm**

*To reserve your place at this event please reply to Lorraine Birrell at: [scotlandevents@people1st.co.uk](mailto:scotlandevents@people1st.co.uk). Please note that spaces are limited and will be allocated on a first come first served basis.*

*For directions and car parking availability please refer to the link above.*

<b>Event:</b>	<b>Personal Licence Holder - Launch of Refresher Training</b>
<b>Date:</b>	<b>Monday 4 March 2013</b>
<b>Time:</b>	<b>14:00</b>
<b>Location:</b>	<b>Queen Margaret University, Edinburgh</b>
<b>How to get there:</b>	<a href="http://www.qmu.ac.uk/travel/default.htm">http://www.qmu.ac.uk/travel/default.htm</a>

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Kind Regards

Lorraine

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Lorraine Birrell

Apprentice Certification Scotland  
People 1st



**What I do:**

*I support the Scotland team to meet their objectives and provide a service for other networks and programmes we are involved in.*

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## Training Specification for the Scottish Certificate for Personal Licence Holders (Refresher) (SCPLHR) Award

### Introduction

This specification has been written by People 1<sup>st</sup>, The Sector Skills Council, the Scottish Government and industry.

Section 87 of the Licensing (Scotland) Act 2005 requires that Personal Licence Holders must complete additional mandatory training 5 years after their Personal Licence was issued. This specification details the requirements of this mandatory training and its accompanying qualification. The content of the qualification, the Scottish Certificate for Personal Licence Holders (Refresher), is derived from this training specification. Achieving the qualification and presenting the certificate to the issuing Licensing Board in Scotland within the prescribed period, is the only method by which the Personal Licence Holder can meet their statutory obligations and continue to be a Personal Licence Holder.

The training specification indicates which elements of the training must be a **TAUGHT COMPONENT** and which elements candidates should cover by self-directed learning via the SCPLH Handbook.

### Timescale

The training delivery should take a minimum of 3 hours. Assessment should take no more than 1 hour. Candidate preparation and reading time is in addition to this. For the purposes of the Scottish Credit and Qualifications Framework (SCQF), this equates to a total of 10 notional learning hours.

### Assessment

The SCPLH (Refresher) qualification should be assessed by way of a 30-question multiple-choice<sup>1</sup> paper. **All areas are subject to assessment. Please note that 80% of examination questions will relate solely to the taught component with the remaining examination questions assessing subjects covered within the handbook**

### Delivery and Assessment Strategy

The delivery and assessment of this award is governed by the Delivery and Assessment Strategy specified by People 1<sup>st</sup>. The Strategy is available without charge from People 1<sup>st</sup> ([www.People1st.co.uk](http://www.People1st.co.uk)).

Further information on mandatory licensing training within Scotland can be found at [www.scplh.info](http://www.scplh.info) (Not yet live)

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<sup>1</sup> Electronic forms of assessment offered by Awarding Bodies are acceptable.

Subject	Reference Note: References are intended as guidance for where relevant information can be found. Not all information in the reference will be fully relevant to every subject, therefore there may be appear to be some duplication in this column.  <b>Unless otherwise specified, all references are to the Licensing (Scotland) Act 2005 and as amended by subsequent legislation<sup>2</sup>.</b>	Taught component	Covered within the Handbook
<b>1) Introduction</b> - not for assessment			
Training must outline the reason for, and importance of, the Licensing (Scotland) Act 2005 including the relationship between licensing and health.	Understanding of key parts of the current Scottish Government's Alcohol Policy <sup>3</sup>	✓	✓
<b>2) Responsible operation of licensed premises</b>			
<b>a) Overview of the licensing function</b>			
Understanding of the 5 Licensing Objectives	<b>Licensing (Scotland) Act 2005</b> S.4 The Licensing objectives  The 5 objectives: <ul style="list-style-type: none"> <li>• preventing crime and disorder</li> <li>• securing public safety</li> <li>• preventing public nuisance</li> <li>• protecting and improving public health</li> <li>• protecting children from harm</li> </ul> Each of the objectives has equal weighting	✓	✓
The meaning of "alcohol"	<b>Licensing (Scotland) Act 2005</b> S.2 meaning of alcohol  i.e. spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include alcohol with a strength of 0.5% or less at the time of its sale.	✘	✓

<sup>2</sup> At the time of writing this includes: Regulations, Scottish Statutory Instruments, the Criminal Justice and Licensing (Scotland) Act 2010, the Alcohol etc. (Scotland) Act 2010

<sup>3</sup> reduced alcohol consumption; supporting families and communities; positive public attitudes, positive choices; improved treatment and support. At the time of writing this is *Changing Scotland's Relationship with Alcohol: A Framework for Action*, published 2009

Subject		Taught component <sup>4</sup>	Covered within the Handbook
<p><b>Broad</b> understanding of the Licensing (Scotland) Act 2005, the Alcohol etc. (Scotland) Act 2010, subsequent relevant legislation and how they apply to the post</p>	<p>Give understanding of broad content of alcohol legislation i.e.</p> <p><b>Licensing (Scotland) Act 2005</b>  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</p> <p>Schedule 2 – Local Licensing Forums</p> <p>Schedules 3 and 4 – Premises licences: mandatory conditions and occasional licences: mandatory conditions</p> <p><b>Alcohol etc. (Scotland) Act 2010 Sections 2 to 6 and Sections 9 and 10 i.e.</b>  S.2 Minimum price of packages containing more than one alcoholic product  S.3 Off-sales: variation of pricing of alcoholic drinks  S.4 Off-sales: restriction on supply of alcoholic drinks free of charge or at reduced price  S.5 Off-sales: location of drinks promotions or at reduced price  S.6 Requirement for age verification policy  S.9 Presumption against prohibition on off-sales to under 21s  S.10 Premises licences: variation of conditions</p> <p><b>The Sale of Alcohol to Children and Young Persons (Scotland) Regulation 2007</b></p> <p><b>The Licensing (Training of Staff) (Scotland) Regulations 2007</b></p> <p><b>Criminal Justice and Licensing (Scotland) Act 2010 Section 195</b></p>	<p>✓</p>	<p>✓</p>

<sup>4</sup> This section should take no more than 10 minutes to deliver as all areas are covered in further detail later on within the specification

Subject		Taught component	Covered within the Handbook
<b>b) Key roles</b>			
General understanding of the role of the Licensing Boards in granting applications; regulating standards in licensing premises; duties to set out licensing policy	<p><b>Licensing (Scotland) Act 2005</b> Paras. 38-56 Policy memorandum Part 2 Licensing bodies and officers</p> <p><b>Alcohol etc. Scotland Act 2010</b> S.9 Presumption against prohibition of off-sales to under 21s S.10 Premises Licences: variation of conditions S.11 Consultation etc. of health boards</p>	<p>✘</p> <p>✘</p> <p>✘</p> <p>✘</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>
General understanding of the function of Licensing Standards Officers their monitoring and advisory role and how this relates to licensing boards and the local authority	<p><b>Licensing (Scotland) Act 2005</b> S.13 Licensing Standards Officers S.14 General Functions of LSOs S.15 Powers of Entry and Inspection (and seizure) (as amended - section 197 Criminal Justice and Licensing (Scotland) Act 2010) S.16 Training of Licensing Standards officers</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✘</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p> <p>✓</p>
Basic understanding of the key roles and powers of other statutory bodies involved in the licensing process	<p><b>Licensing (Scotland) Act 2005</b> S.50 Certificates as to planning, building standards and food hygiene (as amended - section 186 Criminal Justice and Licensing (Scotland) Act 2010) S.138 Police powers of entry S.186 (Criminal Justice and Licensing (Scotland) Act 2010) - Premises licence applications: food hygiene certificates</p>	<p>✘</p> <p>✓</p> <p>✘</p>	<p>✓</p> <p>✓</p> <p>✓</p>
Understanding of the make-up and role of Local Licensing Forum	<p><b>Licensing (Scotland) Act 2005</b> S.10 Local Licensing Forums S.11 General functions of Local Licensing Forums Schedule 2 – Local Licensing Forums</p>	<p>✘</p> <p>✘</p>	<p>✓</p> <p>✓</p>

Subject		Taught component	Covered within the Handbook
<b>c) Licences and operating conditions</b>			
Understanding the different types of licence: premises, personal and occasional	<b>Licensing (Scotland) Act 2005</b> S.17 Premises licence S.56 Occasional licence subs 1) 2) (amended by section 13 of the Alcohol etc. (Scotland) Act 2010 S.71 Personal licence	×  × ×	✓  ✓ ✓
Understanding of the difference between a Premises Licence Holder, a Premises Manager and a Personal Licence Holder	<b>Licensing (Scotland) Act 2005</b> S.19 Premises Manager S.20 Application for premises licence sub 1) (amended by section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 S.24 Applicant's duty to notify Licensing Board of convictions S.41 Duty to notify court of premises licence S.43 Licence holder's duty to notify Licensing Board of convictions S.52 Duty to keep, display and produce premises licence S.54 Dismissal, resignation, death etc. of premises manager S.72 Application for personal licence S.74 Determination of a personal licence application (amended by section 192 (2) of the Criminal Justice and Licensing (Scotland) Act 2010 S.75 Applicant's duty to notify Licensing Board of convictions S.80 Duty to notify court of personal licence S.82 Licence holder's duty to notify Licensing Board of convictions S.87 Licence holder's duty to undertake training <sup>5</sup> S.93 Licence holder's duty to produce a licence	✓  × ✓ ✓ ✓ ✓ ✓ ✓ × × ✓ ✓ ✓ ✓ ✓ ✓	✓  ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓

<sup>5</sup> Including information on statutory training requirements for Personal Licence Holders, i.e. pre application - full SCPLH training, 5 years after Personal Licence issued, SCPLH (Refresher) training, 10 years after Personal Licence issued, full SCPLH training

Subject		Taught component	Covered within the Handbook
Licensed hours	<b>Licensing (Scotland) Act 2005</b> S.62 Licensed hours S.63 Prohibition of sale, consumption and taking away of alcohol outwith licensed hours (amended by section 188 (2) of the Criminal Justice and Licensing (Scotland) Act 2010 S.64 24 hour licences to be granted only in exceptional circumstances S.65 Licensed hours: off-sales S.66 Effect of start and end of British summer time S.67 Power of Licensing Board to grant general extensions of licensed hours S.68 Extended hours applications S.69 Notification of extended hours application (amended by section 190 of the Criminal Justice and Licensing (Scotland) Act 2010 S.70 Determination of extended hours application (amended by section 191 of the Criminal Justice and Licensing (Scotland) Act 2010	✓ ✓ ✓ ✓ ✗ ✗ ✗ ✗ ✗ ✗	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
Understanding the relationship of risk assessment and best practice policies to the operating plan	To include understanding of basic procedure of making a risk assessment and best practice policies as relevant for different types of premises <sup>6</sup>	✗	✓
Detailed understanding of mandatory and discretionary national and local conditions	<b>Licensing (Scotland) Act 2005</b> S. 27 Conditions of premises licence Schedule 3 – Premises licences: mandatory conditions (including late night mandatory and discretionary conditions) Schedule 4 – Occasional Licences: mandatory conditions  <b>The Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007</b>  <b>Alcohol Etc (Scotland) Act 2010</b> S.2 Minimum price of packages containing more than one alcoholic product S.3 Off-sales: variation of pricing of alcohol drinks S.4 Off-sales: restriction on supply of alcoholic drinks free of charge or at a reduced price S.5 Off-sales: location of drinks promotions S.6 Requirement for age verification policy S.10 Premises licences: variation of conditions	✓ ✗ ✗ ✗ ✓  ✓ ✓ ✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓  ✓ ✓ ✓ ✓ ✓ ✓ ✓

<sup>6</sup> best practice polices could include; house rules; closing time procedure; dispersal policy; age related sales; promotions; refusals of service-practice and record keeping; communication within a premises; plan for managing conflict, disorder or drunkenness; noise control and management of smokers

Understanding of operating conditions of members' clubs	<b>Licensing (Scotland) Act 2005</b> S.125 – Special provision for certain clubs	✘	✓
<b>Subject</b>		<b>Taught component</b>	<b>Covered within the Handbook</b>
Relevant offences	<b>Licensing (Scotland) Act 2005</b> S.102 Sale of alcohol to a child or young person  S.103 Allowing the sale of alcohol to a child or young person S.104 Sale of liqueur confectionary to a child S.105 Purchase of alcohol by or for a child or young person S.106 Consumption of alcohol by a child or young person S.107 Unsupervised sale of alcohol to a child or young person S.108 Delivery of alcohol to a child or young person S.109 Sending a child or young person to obtain alcohol S.110 Duty to display notice S.111 Drunk persons entering or in premises in which alcohol is sold S.112 Obtaining alcohol by or for a drunk person S.113 Sale of alcohol to a drunk person S.114 Premises manager, staff etc. not to be drunk S.115 Disorderly conduct S.116 Refusal to leave premises S.117 Offences relating to the sale of alcohol to trade (amended by section 188 (3) of the Criminal Justice and Licensing (Scotland) Act 2010  S.118 Prohibition of unauthorised sale of alcohol on moving vehicles (amended by section 195 (2) of the Criminal Justice and Licensing (Scotland) Act 2010)  S.119 Delivery of alcohol from vehicles etc. S.120 Prohibition of late night deliveries of alcohol (amended by section 195 (2) of the Criminal Justice and Licensing (Scotland) Act 2010) S.121 Keeping of smuggled goods (amended by section 195 (2) of the Criminal Justice and Licensing (Scotland) Act 2010)  S.122 Interpretation of Part 8 S.141 (a) Defence of due diligence for certain offences (as amended by section 195 (3) of the Criminal Justice and Licensing (Scotland) Act 2010) S.141 (b) Vicarious liability of premises licence holders and interested parties (amended by section 195 (3) of the Criminal Justice and Licensing (Scotland) Act 2010)	✓  ✓ ✘ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✘ ✘ ✘ ✓ ✓	✓  ✓

DRAFT - CONSULTATION ONLY



Subject		Taught component	Covered within the Handbook
Detailed knowledge of application and renewal for a personal licence including police powers.	<b>Licensing (Scotland) Act 2005</b> S.71 Personal licence S.72. Application for personal licence S.73 – Notification of application to chief constable S.74 Determination of personal licence application (amended by section 192 (2) of the Criminal Justice and Licensing (Scotland) Act 2010 S.75 Applicant’s duty to notify Licensing Board of convictions S.76 Issue of licence (amended by section 192 (3) of the Criminal Justice and Licensing (Scotland) Act 2010 S.77 Period of effect of personal licence S.78 renewal of personal licence S.79 Notification of determination	× × × × × × ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
Application process for a premises licence including police powers	<b>Licensing (Scotland) Act 2005</b> S.20 Application for premises licence (amended by section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 S.21 Notification of application (amended by section 180 Criminal Justice and Licensing (Scotland) Act 2010 S.22 Objections and representations (amended by section 183 (2) of the Criminal Justice and Licensing (Scotland) Act 2010 S.23 Determination of premises licence application (amended by section 181 of the Criminal Justice and Licensing (Scotland) Act 2010 S.24 Applicant’s duty to notify Licensing Board of convictions (amended by section 183 (3) of the Criminal Justice and Licensing (Scotland) Act 2010 S.25 Further application after refusal of premises licence application S.26 Issue of licence and summary (amended by section 187 of the Criminal Justice and Licensing (Scotland) Act 2010	× × × × × × ×	✓ ✓ ✓ ✓ ✓ ✓ ✓
Variation and transfer of premises licence	<b>Licensing (Scotland) Act 2005</b> S.29 Application to vary premises licence S.30 Determination of application for variation S.31 Variation to substitute new premises manager S.32 Further application after refusal of application for variation S.33 Transfer on application of licence holder S.34 Transfer on application of person other than licence holder S.35 Variation on transfer	× × × × × × ×	✓ ✓ ✓ ✓ ✓ ✓ ✓

Subject		Taught component	Covered within the Handbook
Understanding the duties of a personal licence holder	<b>Licensing (Scotland) Act 2005</b> S.80 Duty to notify court of personal licence S.82 Licence holder's duty to notify Licensing Board of convictions S.87 Licence holder's duty to undertake training	✓ ✓ ✓	✓ ✓ ✓
Rights of objectors	<b>Licensing (Scotland) Act 2005</b> S.22 Objections and representations (amended by section 183 (2) of the Criminal Justice and Licensing (Scotland) Act 2010 S.36 Application for review of premises licence	✗ ✗	✓ ✓
Understanding the relationship between the operating plan and the premises licence, including variations	<b>Licensing (Scotland) Act 2005</b> S.20 Application for premises licence (amended by section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 S.29 Application to vary premises licence S.30 Determination of application for variation S.31 Variation to substitute new premises manager S.32 Further application after refusal of application for variation	✗ ✗ ✗ ✓ ✗	✓ ✓ ✓ ✓ ✓
<b>d) Protecting children from harm</b>			
Understanding of the law relating to sale, purchase, consumption of alcohol, supervised sales by under 18's	<b>Licensing (Scotland) Act 2005</b> S.102 Sale of alcohol to a child or young person (as amended by The Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007) S.103 Allowing the sale of alcohol to a child or young person (amended by section 195 (2) of the Criminal Justice and Licensing (Scotland) Act 2010) S.104 Sale of liqueur confectionary to a child S.105 Purchase of alcohol by or for a child or young person S.106 Consumption of alcohol to a child or young person (amended by section 195 (2) of the Criminal Justice and Licensing (Scotland) Act 2010) S.107 Unsupervised sale of alcohol to a child or young person (amended by section 195 (2) of the Criminal Justice and Licensing (Scotland) Act 2010) S.108 Delivery of alcohol to a child or young person (as amended by The Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007) S.109 Sending a child or young person to obtain alcohol S.110 Duty to display notice  <b>Alcohol etc. (Scotland) Act 2010</b> <b>S.6 Requirement for age verification policy</b>	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓

Subject		Taught component	Covered within the Handbook
Understanding of the application of “proof of age”	<b>The Sale of Alcohol to Children and Young Persons (Scotland) Regulations 2007</b>	✓	✓
	<b>Alcohol etc. (Scotland) Act 2010 - S.6 Requirement for age verification policy</b>	✓	✓
	<b>Smoking, Health and Social Care (Scotland) Act 2005</b>	✗	✓
	<b>Variation of Age Limit for Sale of Tobacco and Consequential Modifications Order 2007</b>	✗	✓
	Understanding best practice for age related sales <sup>7</sup>	✓	✓
	Understanding recognised Proof of Age schemes and related initiatives Understanding where relevant information can be obtained	✓ ✗	✓ ✓
Test purchasing	Understanding clear duties and responsibilities with regard to determining someone’s age	✓	✓
	Clear understanding of purpose of test purchasing	✓	✓
<b>e) Control of order</b>			
The law in relation to drunkenness and disorderly conduct	<b>Licensing (Scotland) Act 2005</b>		
	S.111 Drunk persons entering or in premises on which alcohol is sold	✓	✓
	S.112 Obtaining of alcohol by or for a drunk person	✓	✓
	S.113 Sale of alcohol to a drunk person	✓	✓
	S.114 Premises manager, staff etc. not to be drunk	✓	✓
	S.115 Disorderly conduct S.116 refusal to leave premises	✓ ✓	✓ ✓

<sup>7</sup> to include identifying possible underage or agent sales; high risk products; appropriate service practices; recording refusals and deterrence measures

<p>The law with regard to irresponsible promotions</p>	<p><b>Licensing (Scotland) Act 2005</b>  S.27 Conditions of premises licence (amended by section 7 of the Alcohol etc. (Scotland) Act 2010  Schedule 3 – premises licences mandatory conditions  Schedule 4 – Occasional licences: mandatory conditions</p> <p><b>Alcohol Etc (Scotland) Act 2010</b>  S.2 Minimum price of packages containing more than one alcoholic product  S.3 Off-sales: variation of pricing of alcohol drinks  S.4 Off-sales: restriction on supply of alcoholic drinks free of charge or at a reduced price  S.5 Off-sales: location of drinks promotions  S.10 Premises licences: variation of conditions</p>	<p>✓ ✓ ✓  ✓ ✓ ✓ ✓ ✓</p>	<p>✓ ✓ ✓  ✓ ✓ ✓ ✓ ✓</p>
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DRAFT - CONSULTATION ONLY

Subject		Taught component	Covered within the Handbook
Exclusion orders, review of premises licence, suspension of premises licences, closure orders, endorsements and suspension of personal licences	<b>Licensing (Scotland) Act 2005</b> S.36 -40 – Review of premises licence S.83 Procedure where Licensing Board receives notification of convictions S.84 Conduct inconsistent with licensing objectives (amended by Schedule 6 (16) of the Criminal Justice and Licensing (Scotland) Act 2010) S.85 Expiry of endorsements S.86 Suspension of licence after multiple endorsements S.94 Exclusion orders S.95 Breach of exclusion order S.96 Exclusion orders: supplementary provision S.97 Closure orders (amended by section 193 of the Criminal Justice and Licensing (Scotland) Act 2010) S.98 Termination of closure orders S.99 Extension of emergency closure orders S.100 regulations as to closure orders S.101 Interpretation of sections 97-100	✘ ✘ ✘ ✘ ✘ ✘ ✘ ✘ ✘ ✓ ✘ ✘ ✘ ✘ ✘	✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓ ✓
Powers of entry and rights to inspection	<b>Licensing (Scotland) Act 2005</b> S.15 Powers of entry and inspection (and seizure) (amended by section 197 of the Criminal Justice and Licensing (Scotland) Act 2010) S.138 – Police powers of entry	✓ ✓	✓ ✓
Licence holders: Social responsibility levy	<b>S.14 Alcohol etc. (Scotland) Act 2010</b>  A statutory instrument which makes provision for the imposition on licence-holders, charges for furtherance of the licensing objectives, and which the authority considers necessary to mitigate any adverse impact attributable to the operation of the businesses licence holders in the authority's area.	✓	✓

DRAFT - CONSULTATION ONLY

Subject		Taught component	Covered within the Handbook
<b>f) Training</b>			
The legal requirement of the licence holder and staff to undertake training and to hold relevant qualifications	<b>Licensing (Scotland) Act 2005</b> S.87 Licence holder's duty to undertake training Schedule 3 Premises licence: mandatory conditions  <b>The Licensing (Training of Staff) (Scotland) Regulations 2007</b>	× ×  ✓	✓ ✓  ✓
Guidance in appropriate record keeping procedures	Schedule 3 - Section 6 - Form of training record specified in The Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007	✓	✓
<b>g) Associated Law - Licence Holders require knowledge of the existence of associated laws, how they relate to their job role and where to get further information:</b>			
Weights and Measures Act 1985  The Consumer Protection from Unfair Trading Regulations 2008 Private Security Industry Act 2001 Smoking, Health and Social Care (Scotland) Act (2005) Gambling Act 2005 Equalities Act 2010 Phonographic Performance Limited (PPL) and Performing Right Society (PRS) Basic elements of relevant criminal law such as Misuse of Drugs Act (1971)	For EXAMPLE - information on standard measures, free pouring, beer / cider / lager head size, glass lines and pre-packed alcohol service  For EXAMPLE - information on misleading actions, omissions and aggressive practices  For EXAMPLE - Sections 3 - 6 of that Act  For EXAMPLE - how the business manages it's smoking policy (if applicable)  For EXAMPLE - the 3 Gambling Objectives  For EXAMPLE - Protected Characteristics with regard to employment and services  For EXAMPLE - information on live and pre-recorded music and the licenses required  For EXAMPLE - the classification of drugs and penalties for possession and supply	×  ×  × × × × ×	✓  ✓  ✓  ✓ ✓ ✓ ✓
In addition Personal Licence Holders require to have a basic understanding of the relevant sections and best practice in conforming with the requirements of Food Hygiene legislation, Health and Safety legislation, Noise Regulations, and advertising requirements and the duty of the premises licence holder to carry out a risk assessment			

Subject		Taught component	Covered within the Handbook
<b>3) Effect of irresponsible operation on society and health</b>			
<b>a) Alcohol<sup>8</sup></b>			
Minimum price of alcohol per unit	<ul style="list-style-type: none"> <li>• Knowledge of minimum price per unit<sup>9</sup></li> <li>• Basic understanding of the arguments for introduction</li> </ul>	<p style="text-align: center;">✓ ✓</p>	<p style="text-align: center;">✓ ✓</p>
Units of alcohol and strengths of alcoholic drinks	<ul style="list-style-type: none"> <li>• Knowledge of British standard units</li> <li>• Knowledge of how to calculate the units per drink from a range of common drinks</li> </ul>	<p style="text-align: center;">✗ ✓</p>	<p style="text-align: center;">✓ ✓</p>
Physical and psychological effects of alcohol	<ul style="list-style-type: none"> <li>• the effects on the brain<sup>10</sup></li> <li>• the general effects on behaviour<sup>11</sup></li> </ul>	<p style="text-align: center;">✓ ✓</p>	<p style="text-align: center;">✓ ✓</p>
Sensible drinking limits	<ul style="list-style-type: none"> <li>• Definitions of low risk, hazardous and harmful drinking<sup>12</sup></li> </ul>	<p style="text-align: center;">✓</p>	<p style="text-align: center;">✓</p>
Dispelling myths about alcohol	<ul style="list-style-type: none"> <li>• key facts about alcohol<sup>13</sup></li> <li>• common myths about alcohol<sup>14</sup></li> </ul>	<p style="text-align: center;">✗ ✗</p>	<p style="text-align: center;">✓ ✓</p>
Difference between blood alcohol level and drunkenness	<ul style="list-style-type: none"> <li>• The difference between blood alcohol level and drunkenness<sup>15</sup></li> <li>• Drink-driving limits in Scotland<sup>16</sup></li> <li>• Drink driving limits in England, Wales and Northern Ireland</li> </ul>	<p style="text-align: center;">✓ ✓ ✗</p>	<p style="text-align: center;">✓ ✓ ✓</p>

<sup>8</sup> Information should come from a reputable, up to date source, such as *Alcohol Statistics Scotland*, published biennially by NHS National Services Scotland or the Scottish Government's InfoScotland website (Healthier Scotland – alcohol)

<sup>9</sup> to meet statutory regulation subsequent to the publishing of this training specification

<sup>10</sup> including the consequent graduated physical effects observed and the danger of acute alcohol poisoning

<sup>11</sup> including loss of inhibition and impairment of reasoning and decision making

<sup>12</sup> current edition of *Alcohol Statistics Scotland*, published biennially by NHS National Services Scotland

<sup>13</sup> including the effects of gender, tolerance, food, age, general size, general health, time

<sup>14</sup> including coffee and/or other substances/practices as “sobering agents”, alcohol as a “warmer agent”, “health”, properties of other drinks

<sup>15</sup> BAC as an objective measure used in drink driving offences, compared to drunkenness, a subjective measure of behaviour, as used in licensing legislation

<sup>16</sup> also as determined by legislation subsequent to the publishing of this training specification

Subject		Taught component	Covered within the Handbook
Consequences to the individual, to the business and to society of excessive drinking	the key consequences of excessive drinking for the individual including: <ul style="list-style-type: none"> <li>• Short term dangers<sup>17</sup></li> <li>• Health and social problems<sup>18</sup></li> </ul> the key consequences of excessive drinking for the business <sup>19</sup> the key consequences of excessive drinking for society <sup>20</sup>	✓	✓
Common patterns of alcohol consumption and misuse in Scotland	<ul style="list-style-type: none"> <li>• The patterns of problem drinking and binge drinking</li> <li>• Basic understanding of the level and trend in underage drinking and drunkenness<sup>21</sup></li> <li>• Basic understanding of the level and trends in various types of alcohol-related illness and death.</li> </ul>	✓	✓
<b>b) Illegal Drugs</b> Common patterns of drug consumption in licensed premises Signs to look for - drug dealing Drugs prevention policy The importance of seeking advice from the police with regards to drug dealing in licensed premises		✗	✓

<sup>17</sup> including the increased risk of accidents, becoming a victim of crime or being involved in crime, increase in other socially related risks/problems e.g. sexual diseases or pregnancy from unplanned sex

<sup>18</sup> both short and long term: including hangover, increased blood pressure, birth defects, heart disease, liver disease and various cancers; employment problems, relationship problems and financial problems

<sup>19</sup> including increased difficulty in dealing with drunken customers, ultimately affecting reputation and business viability (such as increased cost of replacing fixtures and fittings, staff turnover, liability and loss of licence).

<sup>20</sup> Including the current trend for high rates of alcohol related crime and disorder; the trend of increasing alcohol related problems including underage drinking, drunkenness, alcohol related disease; and associated costs to society

<sup>21</sup> current edition of *Alcohol Statistics Scotland*, published biennially by NHS National Services Scotland; current edition of *Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS)*, published biennially by NHS Scotland



Subject		Taught component	Covered within the Handbook
<b>c) Social responsibility</b>			
Best practice in setting and maintaining good standards of service and environment	<ul style="list-style-type: none"> <li>• The importance of high and consistent standards throughout a premises<sup>22</sup></li> <li>• The potential for the environment to affect drinking and behaviour</li> <li>• The importance of good service practice<sup>23</sup></li> <li>• Responsibilities to staff and customers</li> </ul>	× × × ×	✓ ✓ ✓ ✓
Common causes of conflict, how to prevent conflict and how to manage conflict situations	<ul style="list-style-type: none"> <li>• Typical scenarios leading to conflict and how these might be prevented or managed</li> <li>• Signs of potential conflict</li> </ul>	✓ ✓	✓ ✓
Security procedures and policies in relation to crime and counter terrorism	<ul style="list-style-type: none"> <li>• Threat procedures<sup>24</sup></li> <li>• Training of staff to look out for left packages / luggage etc.</li> </ul>	× ×	✓ ✓
Promoting sensible drinking	<ul style="list-style-type: none"> <li>• Ways in which responsible drinking behaviour can be promoted</li> <li>• Awareness of the increasing importance of social responsibility and the need for responsible drinking<sup>25</sup></li> </ul>	✓ ✓	✓ ✓
<b>d) Community links</b>			
Understanding the roles and links to local community initiatives, such as Alcohol and Drugs Partnerships (ADPs), Community Safety Partnerships Pub Watch, Retail Watch, City Centre Safe	<ul style="list-style-type: none"> <li>• General awareness of the existence of such schemes</li> <li>• The benefits of such schemes</li> </ul>	×	✓

<sup>22</sup> should include need for cleanliness, tidiness, good state of repair

<sup>23</sup> should include being polite to customers, knowledge of products, customer awareness and managing busy situations

<sup>24</sup> should include how to record threat information, management reporting, emergency service contact procedure and evacuation procedures

<sup>25</sup> such as demonstrated by manufacturers policies and initiatives, such as Drinkaware trust, social responsibility adverts and support by government



# Further Options for Alcohol Licensing - Consultation Paper

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## Ministerial Foreword



With the Licensing (Scotland) Act 2005 and subsequent measures, both in terms of primary (Acts) and secondary legislation (SSIs and regulations) the past few years have seen major reforms to the alcohol licensing regime.

We fully recognise the energy and commitment from trade, Boards, LSOs, the police and others in bringing in this new regime and making it work. However we are also willing to listen to their concerns about where they are experiencing difficulties, or where the legislation is unclear or ineffective.

We have therefore carefully considered what the trade, Boards, the police, Licensing Board clerks, and others, have told us. We have also considered the findings of work like the NHS Health Scotland research to evaluate the regime and the joint report by Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems on “Rethinking Alcohol Licensing”.

We have developed a series of proposals to address these concerns. These proposals have been grouped under two themes, proposals to strengthen the powers of Licensing Boards and the police, and proposals to improve the effectiveness of the licensing regime. In addition we anticipate that these proposals will contribute to our overall aims of addressing the problems of alcohol misuse, while minimising the burdens on the legitimate trade and regulators.

This work exists in a wider context, we are leading the UK with our work to address alcohol misuse through introducing minimum

pricing, while we are addressing the impact on trade and regulators through our ongoing work to review fees, update the guidance for licensing boards and bring forward a Better Regulation Bill.

We would welcome your views on these proposals. Our views are not fixed and we are committed to an open and productive discussion on these proposals.

A handwritten signature in black ink that reads "Kenny MacAskill". The signature is written in a cursive, slightly slanted style.

**Kenny MacAskill MSP**  
**Cabinet Secretary for Justice**

## Chapter 1 - Introduction

1. The Licensing (Scotland) Act 2005, drew on the work of the Nicholson and Daniels Committees, fully coming into effect on 1 September 2009. Since then it has been updated by the Alcohol etc. (Scotland) Act 2010 and the Criminal Justice and Licensing (Scotland) Act 2010, as well as relevant secondary legislation.

2. These measures have delivered significant improvements in alcohol licensing, but the pace of legislative change has created issues of its own. Not all aspects of the licensing regime are working effectively and stakeholders such as the police and local authorities have highlighted areas that require attention. Concerns have been raised around such issues as whether the 2011 Brightcrew decision limits the ability of Boards to consider wider issues, the treatment of members' clubs and procedures at Licensing Boards.

3. We are also keen to strengthen the powers of Licensing Boards and the police, and are seeking views on proposals to criminalise the supply of alcohol to under 18s in a public place, making it easier to address proxy sales of alcohol and giving the police and Boards powers to impose restrictions on licensed premises where disorder is likely to occur.

4. In addition, we remain committed to addressing the issue of alcohol misuse, for example through proposals to strengthen the requirement on Boards to assess overprovision.

5. This consultation is a single component within a programme of work to update and improve the legislation in relation to licensing. The consultation for a Better Regulation Bill concluded on 26<sup>th</sup> October, the consultation on the licensing of taxis and private hire cars commenced on 28<sup>th</sup> November. Work is already ongoing to review the alcohol licensing fees regime and update the guidance to Licensing Boards.

6. We would welcome your views on these proposals, recognising that for some people only a few of these proposals might be of interest. Respondents are welcome to respond on as many or as few questions as they want to. It is however vital that the Respondent Information Form is fully completed with any response, it would also be useful to know on what basis you are responding.

7. Finally, in order to assist with the analysis of this consultation, can you indicate whether you are responding on behalf of a particular business type of business or organisation.

- |   |
|---|
| <p><b>1. Are you responding as an;</b></p> <ul style="list-style-type: none"><li>(a) individual</li><li>(b) primarily on-trade business</li><li>(c) primarily off-trade business</li><li>(d) members' club</li><li>(e) local authority</li><li>(f) another business or organisation, please specify</li></ul> |
|---|



## **Chapter 2 - Proposals to strengthen the powers of Licensing Boards and the police**

1. Further criminalising the supply of alcohol to under 18s  
- extend existing criminal law to cover the supply of alcohol to under-18s in a public place.
2. Restrictions where disorder is likely to occur –  
police powers
3. Restrictions where disorder is likely to occur –  
Licensing Board powers
4. Enable Licensing Boards to apply new local licensing conditions to all existing licensed premises without the need to update individual licences.
5. Reintroduction of the “Fit and Proper” test - Licensing Boards are currently limited to considering relevant convictions notified by the Chief Constable when determining whether someone should be granted a personal licence.
6. Place a statutory duty on Licensing Boards to promote the licensing objectives.
7. Place a statutory duty on Licensing Boards to report annually on how the board fulfilled its duty to promote each of the licensing objectives
8. Place a statutory duty on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy.
9. Extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster limiting appeals against an adopted licensing policy statement outside its introductory period.
10. Consideration of English Language ability

**Proposal 1 - Further criminalising the supply of alcohol to under 18s - extend existing criminal law to cover the supply of alcohol to under-18s in a public place.**

8. The SNP manifesto included a commitment to take forward action as follows.

“We will also clamp down on those adults who supply booze to kids. A legal loophole means that adults can buy alcohol for someone under the age of 18 if the alcohol is consumed in public. This encourages outdoor drinking dens of young people, where those in the group who are over 18 buy alcohol for younger members. We will close this loophole and give the police the power they need to disrupt these drinking dens.”

9. Working in conjunction with early intervention campaigns to address underage drinking and reduce alcohol fuelled anti-social behaviour and violence, the police are able to confiscate alcohol from children and young people intent on drinking in public places and from adults supplying alcohol to child and young people for consumption in public places. They describe this approach as “putting out the fire by removing the fuel”. During these campaigns Strathclyde Police found the majority of ‘outdoor drinking dens’ consisted of small clusters of people ranging in ages from 14 to 21. In many cases those over 18 were the suppliers of alcohol to those under 18.

10. There are existing offences under the Licensing (Scotland) Act 2005, section 105 relating to buying alcohol on behalf of a child or young person or for consumption on licensed premises. Local byelaws, set by local authorities, can also make it an offence to drink in public, however these do not apply across all of Scotland and they operate differently in different areas.

11. When Strathclyde Police confiscated the alcohol they found they were powerless to stop those over 18 simply buying and sharing more alcohol which led to a continuing cycle of confiscation and purchasing. The police were unable to take any further action because it is not, in itself, against the criminal law to give alcohol to someone under 18 for consumption in a public place.

12. We believe that the criminal law should make it illegal to supply alcohol to a person under 18 for consumption in a public place. This may be achieved either through the creation of a new specific offence or adapting the existing section 105 offence contained within the 2005 Act. We consider that the law should not make any exemptions. This would assist in addressing under-age drinking.

13. Such a change would, for example, criminalise parents who served alcohol to their children at, for example, family picnics in public places. However we would expect that police and prosecutors would use their discretion to avoid over-zealous enforcement.

### **Proposal 1**

**1. Criminalise supplying alcohol to a person under 18 for consumption in a public place.**

### **Questions**

**2. Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?**

**3. Are there specific circumstances in which this should not be illegal?**

## **Proposal 2 - Restrictions where disorder is likely to occur – Police powers**

14. The Joint Action Group (JAG) on Football has agreed that alcohol fuels much of the violence and disorder associated with football and felt that more needs to be done to restrict access to alcohol before, during and after football matches. The JAG proposed the introduction of legislation similar to the Licensing Act 2003 section 160, (effective in England and Wales) which would allow a senior police officer to apply to a court requesting the imposition of restrictions on licensed premises within an area where disorder is likely to occur, for example within the vicinity of a football stadium before, after and during a high risk match.

15. Section 160 of the Licensing Act 2003, provides police officers in England and Wales with the power to apply to court for an order requiring all licensed premises which are situated at or near the place of disorder, or anticipated disorder, to be closed for a period of up to 24 hours. The guidance supporting this legislation highlights that events which might justify action under section 160 could include football fixtures with a history of public order problems. When seeking an order under section 160, the burden of proof falls on the police to satisfy the court that their intelligence or evidence is sufficient to demonstrate that such action is necessary.

16. The aim of the proposal is to reduce availability of alcohol around events such as football matches and therefore to have an impact on reducing alcohol-related disorder. It may also help with dispersal of supporters following a football match – something which the police have highlighted as an issue. The proposal could also be applied to marches or other events likely to be associated with significant disorder. It is recognised, however, that this proposal would raise significant concerns amongst establishments located close to some football grounds.

17. Currently in Scotland, police have the powers, under section 97 of the Licensing (Scotland) Act 2005, to apply to a Licensing Board to close individual licensed premises in the interests of public safety. This proposal would extend beyond individual premises to cover all the premises in a specified geographical area.

## **Proposal 2**

**Give the police powers to impose restrictions on licensed premises, both the on and off trade, within an area where disorder is likely to occur**

## **Questions**

- 4. Does section 97 form a suitable basis on which to provide extended police power?**
- 5. Should the procedure under s97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?**
- 6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors' boxes/corporate hospitality, etc.?**

### **Proposal 3 - Restrictions where disorder is likely to occur – Licensing Board powers**

18. The Joint Action Group (JAG) on Football also proposed that Boards should be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches

19. There would have to be significant risk before this proposal was utilised. The aim of this recommendation is to help to reduce availability of alcohol around football matches.

20. Section 10 of the Alcohol etc. (Scotland) Act 2010 inserted a new section 27A into the 2005 Act which enabled Licensing Boards to vary the conditions of individual premises licences in respect of all the premises in its area or vary a group of licences in respect of matters prescribed by the Scottish Ministers. A Board will only be able to exercise the power if it considers it necessary or expedient for the purposes of any of the licensing objectives and in relation to matters prescribed in regulation. Scottish Ministers could therefore lay regulations to allow Boards to restrict opening hours in relation to specified matters. Section 27A requires Boards to publish a notice of any proposed variation, stating that any persons may make representations to the proposed variation and these would trigger a hearing.

21. The time required by these procedures make it unlikely that section 27A could be used for an imminent match. However a condition could be applied relating to all matches, home matches, derby matches, or other event likely to trigger disorder, provided a clear definition could be provided.

22. It would be exceedingly difficult for a Board to devise a condition that served the intended purpose, without being unduly onerous. Once the condition is imposed, it could not easily be changed or relaxed, and a breach would be an offence.

### **Proposal 3**

**Boards should be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches or other events likely to be associated with disorder**

**7. Should Boards be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?**

**8. Do you have concerns about this proposal, and if so, what are they?**

## **Proposal 4 - Variation of local licensing conditions**

23. As detailed above at Proposal 3, section 10 of the Alcohol etc. (Scotland) Act 2010 inserted a new section 27A into the 2005 Act which enabled Licensing Boards to vary the conditions of premises licences in respect of all the premises in its area or vary a group of licences, in respect of matters prescribed by the Scottish Ministers.

24. Section 27A as introduced prevents Boards from attaching conditions unless they are prescribed by Scottish Ministers.

25. Whilst it may be possible for Ministers to prescribe a wide range of conditions this potentially prevents Boards from dealing with issues at a local level. It is therefore proposed to remove the restriction to matters prescribed by Scottish Ministers.

26. We would expect that any introduction of blanket conditions would still have to be subject of consultation, and the usual constraints, for example those at section 27(7) and should ultimately be included within a Board's Statement of Policy.

27. Although it would be open to the Board to carry out what is in effect a 'bulk update' of premises licences, any changes to the legislation would need to ensure that licence holders retained the ability to require a hearing to consider the variation, and possibly a right of appeal to the Sheriff. The Board would also need to ensure that existing premises licences were physically updated, to ensure that up-to-date copies were held on licensed premises.

### **Proposal 4**

**Enable Licensing Boards to apply new local licensing conditions to all existing licensed premises without the need to update individual licences.**

### **Questions**

**9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?**

**10. What procedure should apply before such conditions are applied and what rights of appeal would be appropriate?**



## **Proposal 5 - Fit and proper**

28. Many licensing regimes rely on a 'fit and proper' test as to whether someone is suitable to hold a licence. Indeed the previous alcohol licensing regime included a 'fit and proper' test. There is no 'fit and proper' test under the 2005 Act, various other tests are applied, for example in relation to a premises licence the Chief Constable may object that the applicant is involved in 'serious organised crime', while in relation to both the premises and personal licence the Chief Constable should advise whether the applicant has been convicted of any relevant offence or foreign offence.

29. The current system of relevant offences is complicated and difficult for members of the trade to understand without some form of legal assistance. The increased use of "alternatives to prosecution" and "non court disposals" specifically in relation to licensing offences, is having a direct impact on the ability of the police to present relevant information to Boards.

30. It is argued that returning to a 'fit and proper' test would give the police greater scope to present information to Boards, and give Boards the ability to consider a greater breadth of relevant information when determining a licence application.

### **Proposal 5**

**Allow Boards to consider whether an applicant is a 'fit and proper' person to hold a licence.**

### **Questions**

**11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a 'fit and proper' person?**

**12. Should there be a definition of 'fit and proper' and if so, what should it consist of?**

## **Proposal 6 - Promotion of the licensing objectives**

31. This is a recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) in their report “Rethinking Alcohol Licensing” published September 2011 to place a statutory obligation on licensing boards to promote the licensing objectives.

32. The 2005 Act provides that central to the licensing of alcohol in Scotland are five “licensing objectives”.

- (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.

33. At present the objectives provide the basis for various Board decisions and should be promoted in their licensing policy statements. It is argued that further strengthening this to require Boards to promote the licensing objectives would ensure that the objectives are promoted each time that the Board exercises its functions under the Act.

34. This would be akin to the position in the Licensing Act 2003 for England and Wales.

### **Proposal 6**

**Place a statutory obligation on Licensing Boards to promote the licensing objectives.**

### **Questions**

**13. Should Boards be placed under a statutory obligation to promote the licensing objectives?**

**14. What impact would this have on the work of Boards**

## **Proposal 7 - Statutory duty on boards to report**

35. As an extension of the above proposal to require Boards to promote the licensing objectives, Alcohol Focus Scotland have also proposed that Boards be put under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives.

36. Licensing Boards already provide annual statistics to Scottish Government. This collection of information could be expanded to include Board reports, or they could be submitted separately.

37. If it is decided to proceed, then it would be necessary to decide what format the Board reports should take and what information they should include.

38. Local Licensing Forums are already able to ask for information and statistical data on the Board's functions and they should be best placed to question the operation of Boards. At least once in each calendar year the Licensing Board must have a joint meeting with the Local Licensing Forum.

39. At present there is not a statutory obligation on Boards to provide statistics to the Scottish Government. It would be possible to make this a statutory requirement.

### **Proposal 7**

**Boards be put under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives**

### **Questions**

**15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?**

**16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?**

## **Proposal 8 - Statutory duty on boards to gather and assess information**

40. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on alcohol Problems (SHAAP). It is proposed that a statutory duty be placed on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy.

41. It is argued that this would place beyond doubt that a Licensing Board should gather sufficient information to formulate its policy. Imposing a statutory duty on boards to gather and assess information on each of the five licensing objectives would help ensure that Boards' policies were based on the best available evidence and, in theory, were less likely to be successfully challenged.

### **Proposal 8**

**Place a statutory duty on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy**

### **Questions**

**17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?**

**18. What benefits would such a statutory duty bring?**

## **Proposal 9 - Extend period of statement of licensing policy**

42. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP). It is proposed to extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period.

43. At present every Board must, before the beginning of each 3 year period, publish a statement of licensing policy on their functions under the Act. In preparing the statement, the Licensing Board must ensure that the policy stated in the statement seeks to promote the licensing objectives. At present there is no sanction for not publishing a statement of licensing policy, but it does support the work and decisions of the Board.

44. Under the current arrangements, a licensing policy statement has to be subject to a full consultation. This consultation would not prevent a legal challenge during the course of its life in respect of an individual application or subsequent appeal. It could be argued that a process which is continuously under threat of legal challenge does not serve the public interest. The introduction of a statutory ouster clause may limit the number of appeals against an adopted licensing policy statement.

45. This proposal could also link the review period to that of local authority elections, for example such that the new Board had to prepare a new policy statement within a year of being appointed, and once agreed it would have a duration of five years. There would remain an ability to make changes during the life of a policy statement by way of a supplementary statement.

46. A statutory ouster clause presently applies under section 237 of the Town and Country Planning (Scotland) Act 1997 and provides that parties have six weeks to challenge an adopted local plan. If licensing is to be a policy led system then a statutory ouster clause similar to the planning regime may well be necessary. However, if adopted, the consultation and advertisement requirements forming part of the policy statement procedure may need to be strengthened.

### **Proposal 9**

**Extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period.**

### **Questions**

- 19. Should the period that a statement of licensing policy is in force be extended to five years?**
- 20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?**

## **10. Consideration of English Language ability**

47. At present there is no language requirement in relation to alcohol licensing. Although a personal licence holder must sit and pass a Personal Licence Holder Qualification, it can, at present, be provided and examined in languages other than English.

48. A personal licence authorises a person to supervise or authorise the sale of alcohol. Most staff training is provided by a personal licence holder. However it is not a requirement in the legislation for there to be a personal licence holder on the premises at all times.

49. Concerns have been raised that where personal licence holders are not readily able to understand English, then they will find it difficult to understand, comply with and apply the requirements in relation to alcohol licensing.

50. It is possible that such premises would eventually be subject to enforcement action, for example through failing a test purchase, but this is a poor outcome for the trader, the public, and a poor reflection on the licensing regime itself.

51. We would like to gauge how much of a concern this actually is, and consider options to address it. The Scottish Government and local authorities remain committed to ensuring that there are not unreasonable barriers to businesses trading, and that where any additional requirements are imposed they are set at a level necessary to protect the public, without seeking to impose an undue burden. It has, for example, been suggested that it is required that the Personal Licence Holder Qualification must be taken in English, or include some test for English proficiency. A more onerous alternative would be for there to be a mandatory condition that there is someone on the premises with a reasonable command of English at all times.

### **Proposal 10**

**Measures to ensure that licence holders have a reasonable command of English.**

## **Questions**

**21. Is there currently an issue with licence holders who do not have a reasonable command of English.**

**22. If there is a problem, what would be your preferred means to address this?**



### **Chapter 3 - Proposals to improve the effectiveness of the licensing regime**

11. Brightcrew - Address the uncertainties highlighted by the 2011 decision in Brightcrew Ltd v City of Glasgow Licensing Board.
12. Members' Clubs - Concerns have been raised that some members' clubs, which enjoy a less onerous regime, are abusing either the letter or the spirit of the rules by operating in direct competition with local licensed premises.
13. Concerns have been expressed about procedures at licensing board meetings.
14. Develop a national licensing policy statement that local licensing boards are required to have regard to when drawing up their own policies.
15. Amend the licensing objective in the 2005 Act from "protect children from harm" to state "children and young persons".
16. Interested parties - The Law Society raised concerns that legislation intended to require notification of those connected to a premises licence, was too broadly drafted and would inadvertently criminalise many premises licence holders.
17. Amend section 7 of the 2005 Act, the duty to assess overprovision, to state that the locality for assessment of overprovision can be the entire board area.
18. Amend section 7 of the 2005 Act to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises, and include opening hours in the assessment of overprovision.
19. Address concerns over internet sales by extending promotions ban to cover orders dispatched from England but which were 'taken' in Scotland.

20. Clarify the specific circumstances under which alcohol can be sold in garage forecourts.

21. Timing of Board training

## **Proposal 11 - Brightcrew**

52. The decision of the Court of Session in the case of Brightcrew Limited v Glasgow Licensing Board has potentially important implications for the operation of the licensing system. The case centred on the ability of the Board to refuse an application for a premises licence from a lap dancing club. The grounds of refusal cited by the Board were incompatibility with two licensing objectives (public health and preventing crime and disorder). The refusal was based upon incompatibility with the Board's policy on adult entertainment, particularly with regard to the health and safety of the dancers.

53. An Extra Division of the Inner House allowed the appeal from Brightcrew. It held that the essential function of the 2005 Act is that of the licensing of the sale of alcohol. Since the licensing with which the Act is concerned is the licensing of the sale of alcohol, inconsistency with a licensing objective means inconsistency flowing from the permitting of the sale of alcohol on the premises. Whilst the objectives contained in the Act were desirable in a general sense, that did 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.

54. In other words, the Board was not entitled to refuse to grant a licence on the basis of breaches of its Code of Practice where the provisions breached did not relate to the sale of alcohol.

55. The implications of this decision are open to dispute, and further court judgements would be required to provide greater clarity of interpretation of the existing legislation. Some argue that Brightcrew does not have profound implications as long as Boards have clear and evidenced licensing policy statements, whereas we understand that some Boards are now cautious about taking cognisance of factors such as noise complaints, fights, and other disturbances because they are not directly concerned with the sale of alcohol. Some Board decisions not to take action seem to be based upon a fear of challenge in the courts.

## **Proposal 11**

**Address the uncertainties highlighted by the Brightcrew decision**

### **Questions**

- 23. Would expanding the scope of the Act from 'sale' to 'sale and supply' address the uncertainties created by Brightcrew?**
- 24. Would placing a general duty on Boards to 'promote' rather than 'have regard' to the licensing conditions address the uncertainties created by Brightcrew?**
- 25. Would making clear that the Act allows regulation of the sale of alcohol *or other activities* in the licensed premises within licensed hours address the uncertainties created by Brightcrew?**
- 26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?**

## **Proposal 12 – Members’ clubs**

56. Concerns have been raised that some members’ clubs, which enjoy a less onerous regime, are abusing either the letter or the spirit of the rules by operating in direct competition with local licensed premises.

57. The reasons that clubs have special arrangements under the Licensing (Scotland) Act 2005 remain valid. They exist principally for the benefit of their members and are not commercial enterprises that are open to members of the public. They also play a valuable part in community life in providing a range of sports and social activities.

58. Clubs want to retain their special status, whilst the mainstream trade wants to ensure that individual clubs are not abusing that status. The main complaint is that some clubs are acting commercially, by allowing entry to non-members, and have an unfair advantage over the mainstream licensed trade, the latter being more strictly regulated and not enjoying the same privileges and exceptions. Boards have expressed concern that the Act as it currently stands prevents them from dealing effectively with the minority of members’ clubs that appear to be abusing the system.

59. Minor changes to legislation might allow Boards to discharge their duty more effectively.

60. Constitutions of clubs have to contain a set of rules, but Licensing Boards have no actual power to demand a copy of the constitution. Clubs can change a constitution without notifying a Board. The constitution does not form part of the licence or its conditions, so breaching the constitution does not breach the licence.

61. There is currently no sanction for clubs operating in what would appear to be a commercial nature and there are no grounds upon which to call for a review of the premises licence.

62. It is proposed to incorporate the constitution into the main operating plan or to make adhering to the constitution a mandatory condition in terms of the mandatory clubs provisions. Any breach of the relevant provisions within the constitution relating, to the

sale of alcohol, would then be a breach of licence and could be subject of review.

63. Whilst this would in effect make clubs more accountable it would also generate more work for Boards.

### **Proposal 12**

**Address the concerns that have been raised about members' clubs**

### **Questions**

**27. Do you agree that there should be additional restrictions on the operation of members' clubs?**

**28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence ?**

**29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?**

**30. Do you have any other proposals to tighten up the regulation of members' clubs, for example through additional mandatory conditions?**

## Proposal 13 - Hearings

64. ACPOS and legal agents have expressed concern about procedures and the inconsistency of approach at Licensing Board meetings and in particular the conduct of hearings. With the move to a single police force and legal agents operating across multiple Board areas a more standardised approach could reduce unnecessary burdens.

65. A Licensing Board is considered to be an administrative decision-maker, it is not a judicial tribunal but it does require to act fairly with the applicant and other parties. Although a Board currently has the freedom to perform its function as it pleases 'in so far as it is not bound by statute' proceedings must be conducted in a quasi judicial manner and with proper regard for the rules of natural justice. This does not prevent the Board carrying out its functions by applying its own expertise to the application.

66. Licensing Boards are made up of local authority councillors (minimum of 5, maximum of 10) and have considerable autonomy in the approach they adopt. Accordingly, there are wide variations in the degree of formality, how written and oral evidence is taken and considered, and how decisions are made. Whilst a Licensing Board meeting must be held in public, in the interest of natural justice, it is known that some proceedings are held in private

67. In the main, Boards examine and approve licence applications, they can also carry out reviews where there are concerns. The Board must balance the public interest against the legitimate desires of businesses to open, continue to trade and expand.

68. The local authority must appoint a clerk to the Licensing Board who must be either an advocate or solicitor. The role of the clerk is to provide legal guidance and support.

69. Neither the 2005 Act nor guidance currently give direction in respect of how hearings should be conducted. However the Scottish ministers may by regulation make provision as to the procedure to be followed at or in connection with any alcohol licensing hearing to be held by a licensing board. These provisions may include:

- Notification of hearings

- Rules of evidence, which are to be applied for the purposes of the hearing
- Representation of any party at the hearing
- Timescales by which steps in the procedure must be taken
- Liability for expenses
- 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
- The publicising of meetings of a Board
- Public access to any agenda and record or, and other information concerning, a meeting of a Board

70. Some legal agents are arguing for boards to adopt procedures and rules of evidence akin to those used in courts rather than the current more informal approach. They argue that the introduction of ‘evidential hearings’ would allow them to “properly test” the material presented by an objector or complainer.

71. In relation to objectors there can also be issues of fairness where an objector is required to state their grounds in advance, but the licence holder can present new material at any time. Objectors may not be given the opportunity to rebut the new material and have no right of appeal.

72. Clerks to Boards have voiced some concern about ECHR considerations, the requirement to hold hearings for decisions which could be better addressed by officials through delegated authority and additional powers that they believe would improve the operation of the Act

73. Finally Licensing Boards are not, nor were meant to be operated as courts. The rationale behind this is that the Licensing Board, which has a quasi-judicial function, should be seen as a separate entity from the criminal proceedings, and as in a Civil Court has different standards of proof – ‘balance of probability’ as opposed to ‘beyond all reasonable doubt’.

74. It is entirely a matter for the Licensing Board to decide what evidence or information it accepts or rejects. They have a duty to consider all information put before it. That information and or evidence can include details of behaviour and conduct whether it is associated with criminality or not. However, the Licensing Board



must consider the admissibility, relevance and weight to be given to each item of evidence.

75. Local councillors generally have no legal training in the rules of evidence and may not be best placed to deal with more court like 'evidential hearings'. The Act does not provide for witnesses to be put on oath or cross examined, which may well call into question the credibility of the evidence presented. Objectors, including the police are not normally represented by legal agents. With a shift to 'evidential hearings' this may have to change, which would come at considerable expense. Hearings would be likely to take considerably longer than at present and this would lead to increases in licensing fees so that boards could recover their costs. For these reasons we are not currently convinced of the case for 'evidential hearings'.

76. However administrative inconvenience, in itself, cannot be accepted as a valid excuse for failure to comply with the requirements of natural justice

77. The Act entrusts the administration of the licensing system to Licensing Boards and is designed to protect the local community and general public where problems associated with the licensing objectives occur. Licensing Boards are or should be best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas.

78. It was always envisaged that the Licensing Board would use the hearing process effectively to deter crime and disorder and address issues around premises and individuals failing to comply with the licensing objectives

**Proposal 13**

**Address concerns about procedures at Licensing Board hearings.**

## **Questions**

- 31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?**
- 32. Can you provide examples of particularly good or bad practice at board hearings?**
- 33. Should Board meetings be held in public, in their entirety?**
- 34. What other issues should be considered for inclusion in any guidance on board procedures and why ?**

## **Proposal 14 - National policy statement**

79. Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP) recommended the development of a national licensing policy statement that local Licensing Boards should be required to have regard to when drawing up their own policies.

80. A national policy statement could benefit local Licensing Boards and help them to integrate local and national strategies for managing alcohol related problems.

81. For a national licensing policy statement to have an impact it would require some statutory basis. However given the very wide variations between the different Scottish communities the statement would have to be fairly high level and as a result might not have much real impact.

82. Licensing Boards and clerks have expressed concern that the introduction of a national policy would erode their policy making and discretion.

### **Proposal 14**

**Develop a national licensing policy statement that local Licensing Boards are required to have regard to when drawing up their own policies.**

### **Questions**

**35. Should the Scottish Government introduce a national licensing policy statement and why ?**

**36. What sort of issues should such a statement cover ?**

## **Proposal 15 - Amend the licensing objective to protect children and young persons from harm**

83. Section 147 of the 2005 Act defines a child as “a person under the age of 16” and a young person as “a person aged 16 or 17”. Thus the ‘protecting children’ objective does not apply to 16 and 17 year olds. The distinction between children and young persons creates difficulties for Licensing Boards when dealing with issues around young persons. For example it means that any action the Board take in relation to test purchase failures have to be considered in regards the crime prevention objection as opposed to the children objective. Equally when considering areas set aside for children and young persons within premises, it is difficult to relate to this to the objectives especially in respect of young persons

84. The broadening out of the objective would give Licensing Boards greater scope when considering the wider implications of young persons access to alcohol.

85. The current section 110 notice is inaccurate as it does not fully reflect the rules, it is proposed to update it.

86. Another proposal is to strengthen the current mandatory condition in relation to Challenge 25 which currently only requires that there is an age verification policy in relation to the sale of alcohol on the premises. It is proposed that this be expanded to also require that the age verification policy be adhered to.

### **Proposal 15**

**Amend the licensing objective in the 2005 Act from “protect children from harm” to state “children and young persons from harm”.**

### **Questions**

**37. Should the licensing objective be amended to say “protect children and young people”?**

**38. Does the current mandatory condition in relation to Challenge 25 create difficulties?**

## Proposal 16 - Interested parties

87. The Criminal Justice and Licensing (Scotland) Act 2010, at section 184, proposed that a premises licence holder be under a duty to notify their licensing board if a person becomes or ceases to be a connected person or interested party. This was to respond to concerns that the holders of premises licences were failing to advise Boards of connections with, for example, organised crime. Criminal sanctions would apply for a failure to notify.

88. However the Law Society raised concerns that this provision is too vague and too broad to be practical. If the premises licence is held by a tenant of large chain such as Punch Taverns and there is a change on the Board of Punch does that have to be notified? If, as happens in the current economic circumstances, the ownership passes from a defaulting company to the bank who then sell it on to a private equity firm who parcel it up in a property portfolio that is sold to a pension fund, is a tenant going to keep up and notify at every stage?

89. In order to respond to these concerns the Scottish Government have held off bringing this provision into law, that is it is still to be commenced. We are considering options to make the provision more effective before it is brought into effect.

90. One proposal is to amend the duty to read that, 'when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....'

91. Alternatively we could adopt the approach of the Civic Government (Scotland) Act 1982 Schedule 1, paragraph 5 (3)(b) whereby "The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself".

92. Concerns have also been raised by ACPOS about a conflict with another provision within the Criminal Justice and Licensing (Scotland) Act 2010. These are not yet an issue, as the provision for interested parties has not yet been brought into law. However if it were commenced as currently drafted then it would have the unintended consequence that a premises manager would no longer have vicarious liability. Vicarious liability is where a

person is deemed to be liable for the offences committed by employees.

93. Within section 184, which inserts section 40A into the 2005 Act, an interested person is defined as a person who is not the premises licence holder and is not the premises manager. This has not yet been commenced.

94. However within s195, vicarious liability (responsibility for the offences of employees) is applied to the premises licence holder or an interested party. But as explained above s40A specifically excludes the premises manager from the definition of an interested person, the effect is that the premises manager would not have vicarious liability for the offences of employees.

### **Proposal 16**

**Address concerns that legislation intended to require notification of those connected to a premises licence, was too broadly drafted and would inadvertently criminalise many premises licence holders.**

### **Questions**

**39. Do you agree that the duty as presently drafted is unworkable and why ?**

**40. (a) Do you prefer the proposal that the duty should be amended to read that**

‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....’

**(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982**

“whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

**(c) Alternatively do you have any other suggestions?**

**41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees ?**

## **Proposal 17 - State that the locality for assessment of overprovision can be the entire board area**

95. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP).

96. The 2005 Act places a duty on Licensing Boards to make an assessment of overprovision in any locality within the Boards' area. It is suggested that the use of the term "within" is taken as indicating that the area for the assessment of overprovision cannot therefore be the entire Board area. It is argued that this presents a obstacle when considering the wider scope of the protecting and improving public health objective and prevents Boards from considering the availability of alcohol across their whole geographical area.

97. Boards have struggled to identify locality for overprovision areas and questioned the ability to declare an entire Board area overprovided for. In respect of the Public Health objective, in the absence of a whole population approach over a wider geographical area it is difficult to make a case and almost impossible to relate public health data to individual premises. In terms of the public health objective it is very difficult, if not impossible in most cases to make a causal link between where alcohol is sold and where it is consumed.

### **Proposal 17**

**Amend section 7 of the 2005 Act, the duty to assess overprovision, to state that the locality for assessment of overprovision can be the entire board area.**

### **Questions**

**42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?**

**43. Would this make it easier for Boards to assess overprovision?**

## **Proposal 18 - Clarify that overprovision can include an increase in capacity**

98. This is another recommendation made by Alcohol Focus Scotland (AFS) and Scottish Health Action on Alcohol Problems (SHAAP).

99. It is argued that when considering overprovision this should be made in the widest possible sense. The Act should therefore also explicitly afford an opportunity to consider overprovision in terms of increased hours and capacity within licensed premises.

100. Allowing Boards to consider overprovision in terms of capacity and not just the number of premises would, for example, allow Boards to consider in the round the total off-sales shelving capacity in their area, or the total aggregate opening hours in the on-trade. This total capacity would have to be considered not just in terms of new premises applications, but taking account of any variations or premises that have ceased to trade.

101. To date, boards have adopted different approaches to capacity especially in respect of off-sales premises. They have measured capacity in terms of linear, square, cubic, metres and as a percentage of trading space.

102. The problem is further exacerbated by the interaction between On and Off sales premises. Not all Boards record off-sale capacity in respect of on-sales premises.

### **Proposal 18**

**Clarify that overprovision can include an increase in capacity where there is no increase in the number of premises, and include opening hours in the assessment of overprovision.**

### **Questions**

**44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?**



## **Proposal 19 - Tackle internet sales**

103. Section 139 regulates the remote sales of alcohol (internet sales). The section applies where, in connection with any sale of alcohol, the premises from which the alcohol is dispatched for delivery in pursuance of the sale is not the same as those where the order for the alcohol is taken. Where the premises from which the alcohol is dispatched are in Scotland, the sale of the alcohol is, for the purposes of this Act, to be treated as taking place on those premises.

104. The Scottish Ministers may by regulations make such provision as they consider appropriate for the purpose of regulating the taking of alcohol orders in Scotland for dispatch from premises out with Scotland, but is then delivered in Scotland.

105. Following the introduction of Alcohol etc. (Scotland) Act 2010 concern was raised regarding supermarkets or other businesses taking orders in Scotland for the purchase of alcohol but then dispatching the order from premises out with Scotland. It was suggested that this practice would avoid the minimum pricing legislation and would allow supermarkets to continue with 3 for 2 type drink promotions etc.

106. Where sales are made in Scotland but dispatched from out with they could be controlled by way of regulation. However there could be considerable difficulties for police and local authorities in seeking to enforce such regulations.

### **Proposal 19**

**Address internet sales by extending the Scottish measures such as the multibuy promotions ban to cover orders dispatched from England but which were 'taken' in Scotland.**

### **Questions**

**45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?**

**46. If this were introduced, would the police and local authorities be able to carry out meaningful compliance and enforcement action?**

## **Proposal 20 - Garage forecourts**

107. Clarify the specific circumstances under which alcohol can be sold in garage forecourts.

108. The legislation in relation to garages is under excluded premises at section 123, and is complicated. Although a premises licence should not be granted to a garage, it can be granted where local residents depend on it for a variety of reasons. This protects rural garages, or urban garages that provide an important local service. This has proven difficult to interpret and apply in practice, and many garages now hold premises licences. With most people already driving to do their shopping, it could be argued that the need to stop garages from selling alcohol has been lessened.

109. Another form of excluded premises is a motorway service station. It is proposed to review and update the current definition of a motorway service station.

110. Both these proposals would relate to applications for new licences, rather than to existing premises licences.

### **Proposal**

**Clarify the specific circumstances under which alcohol can be sold in garage forecourts.**

### **Questions**

**47. Should all garages be refused a premises licence?**

**48. What, if any exemptions should apply?**

**49. Can you suggest an alternative approach which would address concerns?**

## **Proposal 21 – Timing of Board training**

111. After the 2012 local government elections concerns were raised by some Licensing Boards and applicants about the timing of hearings.

112. It is a legal requirement that Board members should be trained before they can take part in a Licensing Board. With local government elections scheduled in May, the Licensing Board can be subject to considerable changes. Scheduling training for new members over the summer period can prove challenging, and lead to delays in licence applications being heard. This is a particular issue for those applying for a new premises licence.

113. Many Licensing Board decisions can be dealt with via delegated authority, but not new premises applications or major variations.

114. The Scottish Government recognises that licensing can impose a burden on businesses, and is keen to minimise this.

115. A variety of proposals have been made, for example,

- (a) Allow Board members three months grace to comply with the requirement for training
- (b) Authorise Clerks and Depute Clerks to grant non-contentious new licences and major variations during the three month period, under delegated authority, with an option to have those decisions ratified by the Board at the end of the three month period.

### **Proposal 10**

**Flexibility over training requirements for a new Board.**

### **Questions**

**50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the local government election?**

**51. If so, what would be your preferred approach to address this issue?**

## **Chapter 4 – Conclusion**

116. This consultation covers a wide variety of concerns and suggestions that have been raised by stakeholders on the alcohol licensing regime. There are various other minor issues that the Scottish Government is looking at addressing. For example it is proposed to better align the definition of alcohol within the Licensing (Scotland) Act 2005 with that within the Alcoholic Liquor Duties Act 1979, as amended, by including Angostura Bitters and Black Beers.

117. We would be also interested in your views on whether there are other issues that should be considered for reform ?

**52. Do you have further suggestions for reform of alcohol licensing?**

## Glossary

**Alcohol (Minimum Pricing) (Scotland) Act 2012** – The Alcohol (Minimum Pricing) (Scotland) Act 2012 was passed in June 2012 and will pave the way for the introduction of a preferred minimum price of 50p per unit. This is a significant step forward in the Scottish Government's efforts to tackle Scotland's unhealthy relationship with alcohol.

<http://www.legislation.gov.uk/asp/2012/4/contents>

The draft order setting a minimum price of 50p has now been notified to the European Commission. The earliest date for implementation of the minimum price is 2013.

<http://www.legislation.gov.uk/asp/2012/4/contents>

**Alcohol etc. (Scotland) Act 2010** – the Alcohol etc. (Scotland) Act 2010 introduced a range of restrictions on promotions, and required licensed premises to have an age verification policy.

<http://www.legislation.gov.uk/asp/2010/18/contents>

**Criminal Justice and Licensing (Scotland) Act 2010** – the Criminal Justice and Licensing (Scotland) Act 2010 covered a variety of issues, Part 9 relates to Alcohol licensing, it widened the powers of police and LSOs.

<http://www.legislation.gov.uk/asp/2010/13/contents>

**EU Services Directive** – transposed into UK legislation by the Provision of Services Regulations 2009, the directive sets out how the internal market in relevant services should operate. The aim is to help open up the internal market in services across the EU, increasing employment opportunities and trade.

<http://www.legislation.gov.uk/uksi/2009/2999/contents/made>

<http://www.bis.gov.uk/servicesdirective>

**Fit and Proper test** – many licensing regimes include a 'fit and proper' test where the Board determines whether the suitability of the applicant, for example those within the Civic Government (Scotland) Act 1982. The 2005 Act does not include a 'fit and proper' test, in the case of a premises licence, the Board should consider whether the application is inconsistent with one or more of the licensing objectives, and the police must provide the Board

with a notice stating whether the applicant or any connected person has any relevant offences. Relevant offences are detailed in The Licensing (Relevant Offences) (Scotland) Regulations 2007.

**JAG on Football** - The Joint Action Group (JAG) was established following the Football Summit in March 2011 to develop proposals to deliver the 8 Summit commitments.

The JAG - which had representation from the Scottish Football Association, the Scottish Premier League, the Scottish Football League, Celtic Football Club, Rangers Football Club, Strathclyde Police and the Scottish Government - carefully considered the commitments and has developed proposals to support their delivery. These proposals are set out in the summit report.

<http://www.scotland.gov.uk/Topics/Justice/law/sectarianism-action-1/football-violence/football-summit/JAG>

**Licensing (Scotland) Act 2005** – the 2005 Act followed on from the work of Nicholson and Daniels Committees and replaced the Licensing (Scotland) Act 1976. It brought in the Licensing Objectives, and the system of premises and personal licences.  
<http://www.legislation.gov.uk/asp/2005/16/contents>

**Licensing Act 2003** – the 2003 Act applies to England and Wales and established a single, integrated scheme for licensing premises which are used for the sale or supply of alcohol.

**Licensing Board** – in technical terms, a Board is a creation separate from the local authority. In practical terms, it consists of local authority councillors, with a local authority clerk, a solicitor or advocate, providing support and legal advice. The Board determines applications, considers variations and holds reviews.

**Licensing Conditions** – the 2005 Act allows conditions to be attached to a licence (except for a personal licence), there are four types of condition

- Mandatory conditions – set nationally
- Late Opening premises conditions – apply to certain premises that are open after 1am
- Discretionary or pool conditions – suggested conditions that Boards could apply

- Local conditions – set by Licensing Boards, for example ‘childrens conditions’.

Breach of a condition could result in a licence being revoked.

**Licensing Forum** – each local authority must establish a Licensing Forum, or Forums. The Board is to meet with the Forum at least once each year. The Forum should keep under review the operation of the 2005 Act, the exercise of the Board of their functions, and give advice or recommendations as they feel appropriate.

**Licensing Objectives** – the 2005 Act set out five licensing objectives, which underpin the Licensing Boards in the discharge of their functions. The five licensing objectives are

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting children from harm

**LSOs** – Licensing Standards Officers are appointed by the local authority for the regulation of the licensed trade. They provide information and guidance, supervise compliance and provide mediation services.

**Off-trade** – premises that are authorised to sell alcohol for consumption off the premises, such as shops and off-licences

**On-trade** – premises that are authorised to sell alcohol for consumption on the premises, such as restaurants, bars and pubs.

**Personal Licence Holder** – under the 2005 Act, each sale of alcohol under a premises licence, must be made under the authority of a personal licence holder.

**Premises Licence** – a premises licence conveys the ability to sell alcohol from the premises to which the licence relates. The premises licence must specify a premises manager.

**Overprovision** – every statement of licensing policy published by a Licensing Board must include an statement as to the extent to

which the Board considers there to be overprovision.  
Overprovision is a ground for refusing a premises licence.

**Reviews** – any person may request the review of a premises licence, the grounds for review are that there has been a breach of a condition or any other ground relating to one or more of the licensing objectives. If the Board accepts the review application, then they must hold a hearing. Following the hearing they can issue a written warning, make a variation to the licence, suspend the licence, revoke the licence, or take no action.

**Statement of Licensing Policy** – it is a statutory requirement for Boards to prepare a statement of licensing policy, which should promote the licensing objectives. This should include a statement as to the extent to which the Board considers there is overprovision of licensed premises, or licensed premises of a particular type.



## **ANNEX A: RESPONDING TO THE CONSULTATION**

Please send your response with the completed Respondent Information Form (at ANNEX C) to:

[licensing.consultation@scotland.gsi.gov.uk](mailto:licensing.consultation@scotland.gsi.gov.uk)

or

Peter Reid  
Licensing Team  
2W St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

If you have any queries contact Peter Reid on 0131 244 4533

The deadline for responding is **Friday 21 March**.

We would be grateful if you would use the consultation questionnaire provided (at ANNEX C) or could clearly indicate in your response which questions you are responding to as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at:

<http://www.scotland.gov.uk/consultations>.

The Scottish Government has an email alert system for consultations:

<http://register.scotland.gov.uk>.

This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements, but in no way replaces Scottish Government distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

### **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form, which forms part of the consultation questionnaire, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

**What happens next?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on any changes to alcohol licensing. We aim to issue a report on this consultation process in Summer 2013.

**Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to Peter Reid using the details above.

## **ANNEX B: THE SCOTTISH GOVERNMENT CONSULTATION PROCESS**

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at:

<http://www.scotland.gov.uk/consultations>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation

exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

## ANNEX C: CONSULTATION QUESTIONNAIRE

### Further options for alcohol licensing – consultation paper

#### RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

##### 1. Name/Organisation

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Forename

##### 2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

##### 3. Permissions - I am responding as...

**Individual**

**Group/Organisation**

*Please tick as appropriate*

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis  
*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

## CONSULTATION QUESTIONS

**Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes, including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.**

- 1. Are you responding as an;**
- (a) individual
  - (b) primarily on-trade business
  - (c) primarily off-trade business
  - (d) members' club
  - (e) local authority
  - (f) another business or organisation, please specify

Comments

- 2. Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?**

Yes  No

Comments

- 3. Are there specific circumstances in which this should not be illegal?**

Yes  No

Comments

- 4. Does section 97 form a suitable basis on which to provide extended police power?**

Yes  No

Comments

- 5. Should the procedure under section 97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?**

Yes  No

Comments

**6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors' boxes/corporate hospitality, etc.?**

Yes  No

Comments

**7. Should Boards be able to impose additional conditions to apply variations to opening hours, for some or all licensed premises, to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?**

Yes  No

Comments

**8. Do you have concerns about this proposal, and if so, what are they?**

Yes  No

Comments

**9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?**

Yes  No

Comments

**10. What procedures should apply before such conditions are applied and what rights of appeal would be appropriate?**

Comments

**11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a 'fit and proper' person?**

Yes  No

Comments

**12. Should there be a definition of 'fit and proper' and if so, what should it consist of?**

Yes  No

Comments

**13. Should Boards be placed under a statutory obligation to promote the licensing objectives?**

Yes  No

Comments

**14. What impact would this have on the work of Boards?**

Comments

**15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?**

Yes  No

Comments

**16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?**

Yes  No

Comments

**17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?**

Yes  No

Comments



**18. What benefits would such a statutory duty bring?**

Comments

**19. Should the period that a statement of licensing policy is in force be extended to five years?**

Yes  No

Comments

**20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?**

Yes  No

Comments

**21. Is there currently an issue with licence holders who do not have a reasonable command of English?**

Yes  No

Comments

**22. If there is a problem, what would be your preferred means to address this?**

Comments

**23. Would expanding the scope of the Act from 'sale' to 'sale and supply' address the uncertainties created by Brightcrew?**

Yes  No

Comments

**24. Would placing a general duty on Boards to 'promote' rather than 'have regard' to the licensing conditions address the uncertainties created by Brightcrew?**

Yes  No

Comments

**25. Would making clear that the Act allows regulation of the sale of alcohol or other activities in the licensed premises within licensed hours address the uncertainties created by Brightcrew?**

Yes  No

Comments

**26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?**

Comments

**27. Do you agree that there should be additional restrictions on the operation of members' clubs?**

Yes  No

Comments

**28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence?**

Yes  No

Comments

**29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?**

Yes  No

Comments

**30. Do you have any other proposals to tighten up the regulation of members' clubs, for example through additional mandatory conditions?**

Yes  No

Comments

**31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?**

Yes  No

Comments

**32. Can you provide examples of particularly good or bad practice at Board hearings?**

Yes  No

Comments

**33. Should Board meetings be held in public, in their entirety?**

Yes  No

Comments

**34. What other issues should be considered for inclusion in any guidance on Board procedures and why?**

Comments

**35. Should the Scottish Government introduce a national licensing policy statement and why?**

Yes  No

Comments

**36. What sort of issues should such a statement cover?**

Comments

**37. Should the licensing objective be amended to say “protect children and young people”?**

Yes  No

Comments

**38. Does the current mandatory condition in relation to Challenge 25 create difficulties?**

Yes  No

Comments

**39. Do you agree that the duty as presently drafted is unworkable and why?**

Yes  No

Comments

**40. (a) Do you prefer the proposal that the duty should be amended to read that**

‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....’

**(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982**

“whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

**(c) Alternatively do you have any other suggestions?**

Comments

**41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees?**

Yes  No

Comments

**42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?**

Yes  No

Comments

**43. Would this make it easier for Boards to assess overprovision?**

Yes  No

Comments

**44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?**

Yes  No

Comments

**45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?**

Yes  No

Comments

**46. If this were introduced, would it be possible for the police and local authorities be able to carry out meaningful compliance and enforcement action?**

Yes  No

Comments

**47. Should all garages be refused a premises licence?**

Yes  No

Comments

**48. What, if any exemptions should apply?**

Comments

**49. Can you suggest an alternative approach which would address concerns?**

Comments

**50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the Local Government elections?**

Yes  No

Comments

**51. If so, what would be your preferred approach to address this issue of alcohol licensing?**

Comments

**52. Do you have further suggestions for reform?**

Comments

## **ANNEX D: LIST OF CONSULTEES**

**Responses to this consultation are welcome from any individual or organisation with an interest. The following will be sent a copy of the consultation directly:**

**ACPOS (Association of Chief Police Officers Scotland)**  
**Alcohol Focus Scotland**  
**All Scottish Local Authorities**  
**All Scottish MEPs**  
**Capability Scotland**  
**Clerk of the Justice Committee of the Scottish Parliament**  
**Clerk of the Local Government and Regeneration Committee of the Scottish Parliament**  
**Consumer Focus Scotland**  
**COSLA (Convention of Scottish Local Authorities)**  
**Departmental Committee Liaison Officer**  
**Equality and Human Rights Commission**  
**Federation of Small Businesses**  
**Law Society of Scotland**  
**NHS Health Scotland**  
**Scottish Beer and Pub Association**  
**Scottish Centre for Social Research**  
**Scottish Crime and Drug Enforcement Agency**  
**Scottish Government Alcohol Industry Partnership**  
**Scottish Government Library**  
**Scottish Grocers' Federation**  
**Scottish Health Action on Alcohol Problems**  
**Scottish Human Rights Commission**  
**Scottish Licensed Trade Association**  
**Scottish Retail Consortium**  
**Scottish Wholesale Association**  
**SOLAR (Society of Local Authority Lawyers and Administrators Scotland)**  
**SPICe (Scottish Parliament Information Centre) library**  
**The 6 Legal Deposit or 'Copyright' libraries**  
**The 8 Scottish Police Forces**  
**Wine & Spirits Trade Association**



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## Currie, Fiona

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**From:** patrhanson@aol.com  
**Sent:** 13 February 2013 10:10  
**To:** Currie, Fiona  
**Subject:** Fwd: SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM

-----Original Message-----

From: patrhanson <patrhanson@aol.com>  
To: stephen.mcgowan <stephen.mcgowan@tltsolicitors.com>  
Sent: Fri, 18 Jan 2013 12:04  
Subject: Re: SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM

Hi Stephen

Congratulations on your election and the high profile you are adopting!

Here are my views on the Scottish Government consultation:

Prop 1

Q2 Yes

Q3 No

Prop 2

Q4 Yes

Q5 No - complete overkill

Q6 Not relevant unless extended closures are allowed

Prop 3

Q7/8 I can't see how this takes us forward. This is just as 'onerous' as the current situation which appears to be described in para 22

Prop 4

Q9/10 No comment

Prop 5

Q11 OK with this

Q12 Of course there should be some guidance on 'fit and proper'. Perhaps we can check to see what other licensing regimes use.

Prop 6

Q13/14 I see no reason to change the current wording. It's not the Licensing Board's job to actively PROMOTE the 5 objectives but they will govern all their decisions and the actions of licence holders. This is the health lobby looking for tame agents all over Scotland.

Prop 7

Q15/16 Not relevant assuming that the requirement to 'promote' is not inserted!

Prop 8

Q17 Fairly non-controversial

Q18 Might help to improve Boards' statements of licensing policy

Prop 9

Q19/20 Totally unnecessary tinkering with a system that's working OK

Prop 10

Words fail me. Para 10: 'concerns have been raised' - by whom? They are happy to name AFS, SHAAP etc elsewhere. Totally unnecessary nit-picking

Prop 11

Q23 Possibly  
Q24 No  
Q25 Other activities ARE ALREADY COVERED eg in the operation plan attached to the premises licence  
Q26 Not really

Prop 12  
Q27 No  
Q28 One factor amongst many  
Q29 Can't see any objection  
Q30 Licensing Boards are quite capable of doing this under current legislation eg when faced with applications from clubs for 'open licences'

Prop 13  
This is long-winded in the extreme. In respect of Q33, I suggest that there should always be provision for certain LB matters to be heard in private eg when discussing specific personal licence issues.

Prop 14  
Q35 No. This is just an excuse for AFS, SHAAP etc to attempt to exert extra national influence, knowing that they can't easily do it locally.  
Q36 N/A

Prop 15  
Q37 Yes  
Q38 No

Prop 16  
Q39 Not really  
Q40 I defer to legal experts  
Q41 Probably, especially if problems arise with a PM's running of an establishment with no personal licence holder on site at some times, contrary to best practice.

Prop 17  
Another total capitulation to the health lobby!  
Q42 No  
Q43 No

Prop 18  
Q44 No

Prop 19  
Q45 No - unenforceable  
Q46 No

Prop 20  
No view

Prop 21  
No real problem in my view

Further comments. Personally I would like it to be a legal requirement to have a personal licence holder on the premises during all times that alcohol is on sale.

Final comment. Despite the Minister's preamble, there is precious little evidence that any notice has been taken of the views of the TRADE in drawing up these proposals!

Best wishes and I hope that the above views are useful.

Pat Hanson MBII  
Personal Licence Holder  
North Berwick  
East Lothian

-----Original Message-----

From: BII <[bii@biimail.org.uk](mailto:bii@biimail.org.uk)>

To: patrhanson <[patrhanson@aol.com](mailto:patrhanson@aol.com)>

Sent: Fri, 21 Dec 2012 9:02

Subject: SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM



[View this email in your browser](#)

## SCOTTISH GOVERNMENT ANNOUNCES FURTHER LICENSING REFORM

I wish to make all BII Scotland members aware of a new consultation which has just been launched by Holyrood. This contains a number of very significant proposals about alcohol licensing and could have considerable impact on you and your business. The consultation can be accessed here:

<http://www.scotland.gov.uk/Resource/0041/00411123.pdf>.

As Chairman of BII Scotland I plan to submit a response to the Consultation on behalf of our members and I would be grateful if you could contact me with any feedback you may have. Anyone who wishes to contribute to this should get in touch with me by 18 January 2013 at the latest, using the email address below. Your responses will be discussed at the BII Scotland council meeting on 23 January and a response will be co-ordinated.

Please take the time to read the consultation. It is incredibly important that the trade engage with Government on these matters. The proposals include the following:

- Reintroducing a "fit and proper test"
- Considering English language ability
- Tightening up rules on "member's clubs"
- Further powers for licensing boards and police
- Proposed national licensing policy

Yours sincerely,

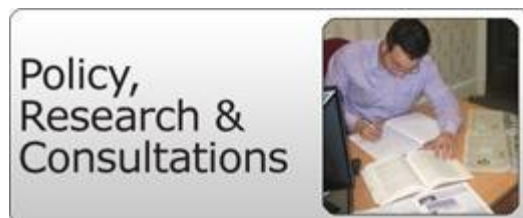
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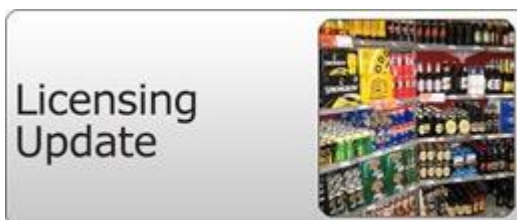
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5



## **Policy, Research & Consultations**

### **AHA welcomes minimum unit price consultation and calls for 50p per unit**

The [Alcohol Health Alliance UK](#) has welcomed the publication of the UK Government's [consultation](#) on their Alcohol Strategy which includes minimum pricing. The Alliance calls for a 50p minimum unit price to match Scotland's plans. Once fully implemented, research suggests that a 50p minimum price will prevent more than 3,000 alcohol-related deaths and 40,000 crimes in England each year, whereas a 40p price per unit will prevent 1,190 alcohol-related deaths and prevent 10,100 crimes. The consultation, published by the Home Office, also covers other aspects of the Government's Alcohol Strategy, including banning multi-buy offers, a review of the mandatory code for licensees and small businesses, and a new duty to consider the impact on public health of licensing decisions.

### **Briefing - minimum pricing and taxation are complementary pricing mechanisms**

Alcohol Focus Scotland has published a [briefing](#) which explains why minimum pricing and taxes are complementary pricing mechanisms which, together, can deliver greater health and social benefits than taxation alone. Alcohol taxes are an important means of regulating the overall affordability of alcohol. However, establishing a minimum price per unit of alcohol is a targeted solution for reducing the sale of the cheapest, strongest products which are associated with the most harm.

### **Violence Reduction Unit launches alcohol awareness campaign**

The campaign, launched on the same day as the unit's annual conference, aims to encourage parents and carers to think about how their drinking behaviour can influence their children's future attitudes to alcohol. It is accompanied by an animation which shows how easy it is to lose track of how much you drink at Christmas. Follow the campaign on Twitter at #12days and read more [here](#).

## **Chief Medical Officer highlights liver disease rise**

Prof Dame Sally Davies' first annual report has highlighted the need for comprehensive action to address rising rates of liver disease. Liver disease is the only major cause of mortality and morbidity that is on the increase in England while it is decreasing among our European peers. Between 2000 and 2009, deaths from chronic liver disease and cirrhosis in the under 65s increased by around 20%, while they fell by the same amount in most EU countries. The Chief Medical Officer said there needed to be investment in prevention, early diagnosis and effective treatment. Read more [here](#).

## **Alcohol and cancer risks: a guide for health professionals**

This [guide](#) has been produced by Scottish Health Action on Alcohol Problems (SHAAP) to summarise for health professionals the links between alcohol consumption and cancers so that they can use opportunities in their work to intervene to reduce the risks. The guide was produced following an expert group convened by SHAAP.

## **Alcohol-free January plea**

Alcohol Concern is urging Britons to stop drinking for the whole of January to avoid more than 4.5 million working days being lost to hangovers. They issued the [Dry January](#) challenge to drinkers on the back of statistics estimating that 200,000 people go to work with a hangover every day, costing the economy around £6.4 billion every year. The campaign follows the charity's Alcohol Harm Map which found the biggest drain on NHS resources were baby boomers, not binge drinkers. Alcohol Concern hopes those taking part will use it "as an opportunity to ditch the hangover, reduce their waistline, and think about whether their drinking is really working for them".

## **Cheaper to get drunk than go to cinema, say young people**

Cheap alcohol and the way it is promoted encourages excessive drinking, according to one thousand 16-24 year olds surveyed by Alcohol Concern and Balance North East for Alcohol Awareness Week. The report, [Drinking to get drunk, Influences on young adult drinking behaviours](#) highlights that young people can buy a 3 litre bottle of cider for less than admission to the cinema. Two thirds of the young people questioned agreed that cheap alcohol promotions encourage drinking to get drunk.

## **Alcohol brief interventions up**

NHS Scotland Chief Executive's Annual Report shows over 272,000 Alcohol Brief Interventions to help tackle harmful and hazardous drinking have been carried out over the last four years; growing from 30,310 in 2008/09 to 55,757 in 2009/10, 88,318 in 2010/11 and a high of 97,830 in 2011/12. Read the report [here](#).

## **Moderate drinking in pregnancy can affect child's IQ**

Researchers from Oxford and Bristol universities looked at the IQ scores of 4,000 children as well as recording the alcohol intake of their mothers. They found "moderate" alcohol intake of one to six units a week during pregnancy affected IQ. Previous studies have produced inconsistent and confusing evidence on whether low to moderate levels of alcohol are harmful in pregnancy, largely because it is difficult to separate out other factors such as mother's age and education. But this research ruled that out by looking at changes in genes that are not connected to social or lifestyle effects. Read more [here](#).

## **Scottish mortality rate among highest in western Europe**

The Glasgow Centre for Population Health has published a report which suggests Scotland has the highest mortality rate in western Europe among working men and women. [Still the Sick Man of Europe?](#) shows that while improvements have been made in some areas, such as the mortality rate for heart disease, stroke and some cancers, other areas are showing no signs of progress from decades past. Smoking and high alcohol consumption were also highlighted as risk factors for oesophageal cancer, for which the mortality rate for men was 71% higher than the average.

## **Rail ban on booze hailed a success**

ScotRail has said passengers have generally adapted well to the introduction of the alcohol ban between 9pm and 10am on all train services except the Caledonian Sleeper. Only five people have been reported to the Procurator Fiscal since the ban was introduced three months ago. Meanwhile, an alcohol ban will be enforced on Edinburgh's tram service when it opens in 2014. By-laws would prevent intoxicated people from getting on a tram or carrying

alcohol. If breached, the regulations carry a maximum fine of £1000.

## **Parliamentary Update**

### **New Parliamentary motions, questions and answers**

Dr Richard Simpson MSP put forward a motion that Parliament supports last week's Alcohol Awareness Week. A motion by Kenneth Gibson MSP highlighted the Scottish Association for Mental Health's Two Too Many campaign, which aims to raise awareness that two people lose their life to suicide every day in Scotland. Mary Scanlon MSP asked a question about what is being done to improve understanding and treatment of mental health and alcohol problems, while Kevin Stewart MSP asked several questions about alcohol counsellors and how much money is allocated to their training. The full list of motions, questions and answers can be viewed using the [search facility](#) on the Scottish Parliament website.

### **Scottish drink-drive limit cut endorsed by MSPs**

Plans to cut the drink-drive limit in Scotland from 80mg to 50mg per 100ml of blood have been endorsed by the Scottish Parliament. One in 10 deaths on Scotland's roads involves drivers who are over the current alcohol limit, while motorists are said to be five times more likely to be involved in an accident while at the current limit, compared with 50mg. The public consultation on reducing the limit has now closed and responses will be published soon. Read Alcohol Focus Scotland's consultation response on our [website](#).

## **Licensing Update**

### **Four new alcohol licences granted in Edinburgh, despite health objections**

The City of Edinburgh Licensing Board has approved four new licences for branches of Tesco and Sainsbury's mini-supermarkets. NHS Lothian had called for all four bids to be knocked back as the new stores will serve areas which already have an above-average number of off-licences per 10,000 people. NHS Lothian public health specialist Jim Sherval said the decision was "a major blow to stopping alcohol problems in Edinburgh as availability of alcohol is influential in levels of alcohol consumption." Read more [here](#).

### **Licensing Act evaluation published**

NHS Health Scotland has published the second interim evaluation [report](#) on the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005.

### **Licensing training dates for 2013**

Alcohol Focus Scotland has set dates for [Personal Licence Holder training courses](#) next year. One course will run per month at our offices in Glasgow. For Staff, Licensing Standards Officers, Licensing Board Members and Trainers course dates please get in touch.

## **Alcohol Focus Scotland News, Training & Events**

### **Annual Report 2011/12**

Read Alcohol Focus Scotland's latest [Annual Report](#) online.

### **YPAAD - new resource for teenagers**

Alcohol Focus Scotland is developing a new resource for young people aged 11-16 who may be affected by another person's drinking. YPAAD is a downloadable app which aims to help young people explore the effects of another person's drinking on their own lives and highlight coping strategies used by others who have been through similar experiences. The app will also provide links to local agencies that can offer help and support. We anticipate the app being available early next year. Please contact [Jane Wilson](#) for more information.

### **Directory of services for children affected by parental drinking**

A directory of projects and services across Scotland that support children and young people affected by their parent's or another adult's drinking has been updated and is available on the Alcohol Focus Scotland [website](#). If you know of any relevant agencies not listed here please let us know.

### **National event for Alcohol & Drug Partnerships**

The annual Alcohol & Drug Partnerships (ADP) event was held earlier this month, providing an opportunity for ADPs to share learning and support them in their delivery of core outcomes. Alcohol Focus Scotland supported two workshop sessions at the event. The first workshop on building national capacity was co-facilitated by Sarah Currie, ADP Policy and Development Coordinator, and informed ADPs of the new national Delivery Support Programme. The second workshop was on licensing, with Linda Bowie of AFS and Andrew Fraser from West Dunbartonshire Council presenting on how to influence licensing decisions and work better with Licensing Forums and Boards. We would encourage ADPs to please check our website for examples of good practice and share their experiences with us.

### **Download our new mobile app**

For the latest Alcohol Focus Scotland news when you're out and about, download our [free app](#) to your smart phone.



**Alcohol Focus Scotland is on Twitter. Follow us @alcoholfocus**



Events

**Cross Party Group on Drug and Alcohol Misuse**

Wednesday 20th  
February, 5.30pm,  
Scottish Parliament

The discussion topic will be the "Review of opiate replacement therapies". To register please email:

[michaelg@sdf.org.uk](mailto:michaelg@sdf.org.uk)

**Alcohol and British Society Conference**

Tuesday 12 March,  
London

The Alcohol Research UK conference presents some of the latest developments in alcohol research. Speakers include Professor Sir Ian Gilmore and Professor Jonathan Chick. More information and booking [here](#).

**National Licensing Conference 2013**

Tuesday 3 September,  
Glasgow

More details will be posted on the [AFS website](#) soon.

Research

[Alcohol problems in the criminal justice system: an opportunity for intervention](#)

[Global consensus on safe drinking limits required](#)

[Alcohol-fuelled sleep less satisfying](#)

[School-based psychological interventions reduce risk of alcohol misuse](#)

[Associations between proximity and density of local alcohol outlets and alcohol use among Scottish adolescents](#)

Resources

Alcohol Policy



**Minimum pricing court case concludes**

The legal challenge to minimum unit pricing brought by the Scotch Whisky Association (SWA) and their European counterparts concluded at the Court of Session on 25th January. Judge Doherty will prepare his ruling over the coming months. This process could take between three and six months.

**Alcohol Health Alliance backs 50p minimum price across the UK**

In its response to the public consultation on the Government's Alcohol Strategy for England and Wales, the [Alcohol Health Alliance](#) (AHA) has expressed strong support for plans to introduce a minimum unit price. However, the AHA believes the price should be set at 50p, in line with Scotland, rather than the proposed 45p.

**Health bodies condemn anti-minimum pricing campaign by The Wine and Spirit Trade Association**

Dr Evelyn Gillan, Chief Executive of Alcohol Focus Scotland said: "The global producers and supermarkets have spent the last five years trying to prevent minimum pricing being introduced in Scotland. Having failed to do so, they have followed in the footsteps of their colleagues in the tobacco industry and sought to delay this vital health measure by launching a legal challenge. Most people will see this campaign for what it is - an attempt to bully government into adopting policies that favour narrow business interests at the expense of the protection of our country's health and wellbeing." Read our [briefing](#) which provides the facts about minimum pricing.

**Further options for alcohol licensing - consultation**

The Scottish Government is consulting on proposals for changes to the alcohol licensing regime in Scotland. The proposals address concerns raised by a wide variety of stakeholders, and are grouped under two themes - proposals to strengthen the powers of Licensing Boards and police, and proposals to improve the effectiveness of the licensing regime. The consultation paper and information on how to respond is available [here](#). The deadline for responding is Friday 21 March.

**UK alcohol deaths for 2011**

The [latest figures](#) published by ONS show there were 8,748 alcohol-related deaths in the UK in 2011, 42 fewer than in 2010. Over 66% of all alcohol-related deaths in the UK were males, and death rates were highest in the North of England and lowest in the East of England. Statistics for alcohol-related deaths in Scotland are available [here](#).

**Drop a glass size campaign**

A campaign encouraging women to "Drop a glass size" in 2013 was launched by Health Secretary Alex Neil. As part of the campaign, which also includes a national roadshow, a new 'drinking mirror' smartphone app (free until the end of March) has been developed to show people the shocking effects of regularly drinking too much. Latest figures show around 38% of women regularly exceed the recommended limits of 2-3 units per day and 14 units per week. Find out more at [Drink Smarter](#).

[Licensing Toolkit](#)

[Children affected  
by adult's drinking](#)

[Rory evaluation report](#)

**Training dates**

**ServeWise Personal  
Licence Holder's  
Course**

One day courses will  
take place at Alcohol  
Focus Scotland on  
19 February, 19 March  
and 16 April.  
More information  
[here](#).

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