

THE NICHOLSON COMMITTEE'S
REVIEW OF LIQUOR LICENSING LAW IN SCOTLAND

COMMENTS BY THE SCOTTISH GROCERS' FEDERATION

EXECUTIVE SUMMARY

1. Age related products account for 70% of a modern convenience store's turnover.
2. Licensed products account for 30% of turnover.
3. The large supermarkets account for over 80% of the total grocery market and direct their liquor sales at the car-borne shopping market through multi-pack promotions. This is not the case in the convenience store industry which serves the local community.
4. SGF does not want 24-hour off-sales licensing as we believe this will result in security problems creating the need for security guards and window-access only shop fronts at night. Such a move could jeopardise staff safety.
5. SGF would like to see two types of premises licence, one for the off-trade and one for the on-trade.
6. In addition, we would like the National Licensing Forum to produce an 'Off-Trade Charter', specifically setting out a **national** approach to off-sales regulations.
7. SGF would like to see the permitted hours for off-sales become 7.00am to 11.00pm seven days per week.
8. SGF welcomes the proposal to extend the scope of the Licensed Premises (Exclusion of Certain Persons) Act 1980 to the off-sales sector.
9. SGF does not believe that the proposal for self-financing is feasible as we believe there will be no control over the expenditure which will be far greater than current cost estimates.
10. SGF proposes an off-sales premises licence fee levy on a sliding scale.
11. We would like the first three years premises licence fee to be frozen to take into account set-up costs. Thereafter to be reviewed annually based on r.p.i.
12. Agree in general with appointment proposals and training of Licensing Boards. The chairman should sit for the length of the council's term of office.
13. Support the proposal for a National Licensing Forum.
14. SGF has reservations on the proposal for Local Licensing Forums. More discussion and consultation required on this subject.
15. Welcome the proposals on Local Licensing Standards Officers as liaison officers and **not** enforcers.

16. Operating Plans are a good idea when the application is for a **new** licence.
17. We would ask that sales staff be required to have undergone ‘appropriate training’, not ‘prescribed training’.
18. SGF would ask the committee to reconsider the proposal on sanctions and interim suspensions of the sanction applied by a Licensing Board. In short, we would ask that the licence remain operational until the board’s sanction has been considered by a local sheriff within 14 days. If he/she upholds the board’s decision then the sanction should apply until the full appeal heard by the Sheriff Principal.
19. Supermarkets must not be permitted to sell licensed products at below-cost prices.
20. We would ask the Scottish Executive to promote a policy of ‘No Proof, No Sale’.

SCOTT LANDSBURGH
Chief Executive, Scottish Grocers’ Federation

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The Scottish Grocers' Federation represents directly some 400 members operating around 900 convenience stores throughout Scotland and around 3,000 stores in total are associated with the Federation's work through other symbol and franchise arrangements. All are independently owned, and many operate in rural and island areas, where they are often the only food and alcohol retailer in the community. Our members' stores are open long hours, many of them from 7.00am to 10.00pm daily, seven days a week. Profitability is low, because a large part of the variety of goods stocked are low margin products, and rural/remote stores, in particular, generate only a modest profit for the proprietor, a fact recognised by Government in recent legislation giving a statutory reduction in business rates for single village stores.

Age related products account for around 70% of a modern convenience store's turnover, and licensed products will comprise around 30% of turnover. Virtually all of our membership hold off-licences and as such any changes to the legislation affecting off-licences will have a massive impact on the operation of our members' businesses. Many of these businesses operate within the local community employing the vast majority of their staff from within that community, ensuring that they become an essential part of the social and financial fabric of the community.

In relation to the last point, we have been making representations to the Scottish Executive for a period of three years regarding the problems associated with anti-social behaviour in local shopping precincts and we are now represented on the Off-Licence Review Group set up by the First Minister to examine: "The scope for better engagement and consultation at community level on the grant of licences; and management and enforcement mechanisms which will help to prevent off-licences being a focus of anti-social behaviour."

Our members are without exception very keen to rid our communities of this type of behaviour but we feel we must have the support of government and therefore legislative action must be taken in a number of areas to ensure that sanctions available to the authorities can be raised swiftly and effectively on the perpetrators of such crimes. Coupled with this problem we believe there is a perception in the mind of the public and some politicians that the off-licence sector is fuelling a rise in anti-social behaviour by encouraging the sale of alcohol to underage persons resulting in serious health and social problems.

At this point we would like to make it very clear that it is no way the intention of our members to promote such a policy and we believe the problems are much more complex than has been previously stated. A particular concern is the high incidence of third party purchase of alcoholic products for teenagers under 18 years of age, sold on to them at a premium by irresponsible adults. In addition we believe there are opportunities for the purchase of alcohol at car-boot sales, through factories and offices, due to the still significant amount of non-duty paid goods being smuggled into the country and sold directly to the consumer.

As a final general comment we would also ask you to take note of the fact we are delighted to see within the Nicholson report a suggestion that the Scottish Executive has arranged for the introduction of a national proof-of-age card which would be recognised through the whole country.

We would like at this point to put on record our general feeling that the Nicholson report is a very well constructed and sensible approach to offer a template for new licensing regulations in Scotland. In its approach we believe the reference to the data referring to health and public order issues and the incidence of unsupervised drinking by children hits the appropriate problem areas which urgently need to be addressed in Scotland at this time. The introduction of the five licensing principles is a superb reference point for all legal practitioners and licensees to adhere to when arguing the principles of licensing.

Having said all of that, we would ask the Committee to review certain points which we feel would help the off-licence part of the industry be treated in a more relevant manner and also allow for certain characteristics which are not replicated in other parts of the licensed trade to be acknowledged.

The Off-Trade

The off-licensed trade is split into a number of segments, primarily due to the size and location of the retail outlets concerned.

The industry strives to supply off-licensed products at a convenient time to the consumer for the consumption of alcohol, primarily in their own home. It is for this reason that packs have been developed into multi-packs and the variety of products, in particular, wines, has increased dramatically in the last decade. The consumer is undoubtedly more aware of the differences in quality and taste characteristics of wines and this is now also being transmitted to knowledge of continental beers and liqueurs. However there are some significant differences which demonstrate the need for the licensing fee system to reflect that the operations in the off-licensed sector operate on a level playing field. The large supermarkets account for over 80% of the total grocery market and direct their liquor sales primarily at the car-borne trade. On the other hand the smaller community shops which we represent, although a significant and rising proportion of their trade is car-borne, tend to directly address the convenience aspect of consumer purchasing and therefore their sales volumes are much lower.

In this modern environment, conditions are much more time constrained than ever before and as such we are moving more and more into the 24-hour community. This shift in habits has been addressed by our membership by adopting store hours in the main from 7.00am to 10.00pm, 7 days per week. Our membership is reluctant to go beyond 11.00pm as we believe there will be an increased requirement for security involving such things as security guards and changes to shop fronts in order to accommodate 24-hour shopping. This, we believe, is not beneficial to the local community and could result in an increase in anti-social behaviour at the local level. This would obviously be contradictory to the intentions of the Nicholson Report and also create a perception that off-licences would be fuelling the sources of anti-social behaviour.

In conclusion, we would ask that following these initial comments the Committee consider the following specific points as reasonable amendments to the proposals put forward within the Report.

Premises Licence

Regarding the initial suggestion that there be only one Premises Licence, we feel obliged to contest this suggestion and to argue that the Premises Licence must be split into two as follows:

1. One for the off-trade;
2. One for the on-trade;

Our reasoning for this is that we do not believe there is sufficient guidance within the Nicholson report to create a consistent and common **national** approach to off-sales regulations, in particular with relation to the proposals for abolishing permitted hours. Should the Nicholson proposal of one Premises Licence be adopted, at the very least we insist that there must be an 'Off-Trade Charter' explicitly detailing the permitted hours for off-sales, the appropriate training for off-sales (which will be considerably different to the on-trade) and the level of licence fee which is appropriate for all off-licensed premises.

In all of our considerations we feel our biggest criticism of the Nicholson report is that in its potential for flexibility it will create inconsistency and uncertainty from Licensing Board area to Licensing Board area. Due to the likelihood of differences in the approach between Boards, we believe that Nicholson has tried to address this with proposals for a National Licensing Forum (which we support), but to date the track record of Scottish Licensing Boards acting consistently has been non-existent.

Business needs certainty more than anything else in order to ensure legislation is adhered to across the board and that training systems are put in place for managers and their staff to ensure they comply with legislation. This can't be achieved unless there is a fixed national framework for off-sales which pertains to everyone in the off-sales sector.

Personal Licence

We welcome the proposal for a separate licence but would seek assurance that nothing more than a simple notification to the clerk to the board is required when that person moves from one premises to another, with no administration fee payable.

Permitted Hours

We agree with Nicholson that the anomaly of permitted hours for off-licensing on a Sunday morning is now out of date, and in line with our original submission to the Committee we reiterate our desire to see the permitted hours for off-licences running from 7.00am to 11.00pm, 7 days a week. We believe that ACPOS (Association of Chief Police Officers in Scotland) have stated that they are of a similar mind with regard to licensing hours and we are seeking confirmation of this in order to present a united viewpoint.

We believe these hours are appropriate for a number of reasons as follows:

- a. The 11.00pm closing hour will bring off-sales in line with the current on-trade hours.
- b. Most of our membership opens at 7.00am and as such it is easier to operate a store when all products are available for sale during the opening hours.
- c. We do not believe any of these proposed extensions will in any way create anti-social behaviour, which is much more likely to occur as a result of extending the hours beyond 11.00pm.
- d. In fact, we believe these proposals will go a long way to reduce the potential for conflict at the point of sale within our members' stores.

We also believe that there should be no availability of extensions to these permitted hours under any circumstances.

Anti-Social Behaviour

SGF have separately responded to consultations on both the Anti-Social Behaviour Bill and the consultation on Crime Wardens.

In general, we support both proposals to deal with the problems of anti-social behaviour but there is one specific area we are concerned with, being the present procedure for raising anti-social behaviour orders both timeously and effectively. This has been dealt with in detail in our response to these consultations.

We also welcome the point raised in chapter 14, paragraph 14.11, that “the Licensed Premises (Exclusion of Certain Persons) Act 1980 should be amended so as to extend its scope to all licensed premises including in particular those which currently operate under an off-sale licence.”

The off-sales sector has been plagued with anti-social behaviour from young people for a number of years and will do all in its power to eradicate it from its community.

Financing

The next subject we would like to address is the issue of financing the proposed scheme. As a first principle we would like to state that we do not believe any such national scheme could be feasibly self-financing. On a theoretical point it is unworkable as those who are investing the finance are not the same people who are paying for it. Furthermore should any retail business concede the principle of self-financing for the regulation of licensing then it is likely that this would lead to other financial proposals coming from the government. Such a proposal has already been thrown out at the formation of the Food Standards Agency on the basis that business rates, property taxes, and other business corporate taxes, adequately fund the regulatory authorities provided by local and national government.

We would however be prepared to see a change from the current system of charging for off-sales licences. In the first instance we would like to point out that because we are not seeking a significant extension to the permitted hours then we certainly do not anticipate much, if any, increase in business and therefore there will not be any significant increase in income in order to pay huge increases in licence funding. However, we do realise that as there will be more communication between parties the running costs of the new licence system will increase. We would like therefore to propose the following to contribute to financing such an increase:

We would propose that the licence fee on the off-sales trade be levied according to the size of the net sales area on a sliding scale. Our membership represents the small store sector, mainly below 5,000 sq. ft. of sales and for such a unit we would propose an annual charge of £100 for the Premises Licence. We believe there should be two other scales; one for a net sales area of 5,001 – 15,000 sq. ft., and a third tier for 15,001 sq. ft. and over. We do not feel qualified to propose an amount for the sales units which we do not represent and therefore leave that for your own consideration.

In addition, we would suggest that for the first three years the Premises Licence fee should be frozen and thereafter should be reviewed annually based on the Retail Price Index. This is due to the fact that initial set-up costs to the off-sales trade in relation to the new Premises License will be substantial. In addition we propose that the Personal Licence be priced at £50 as an absolute maximum due to the high costs of training which will be almost entirely borne by the off-sales trade.

Appointment of Licensing Boards

We have reviewed the Nicholson Report’s proposals for the appointment of Licensing Boards and conclude that in general the recommendation for either ten or fifteen members appointed from local elected councillors, depending on the district, is appropriate. However, we feel that it would be more democratic and probably more consistent in the approach if a minimum of fifty percent of those appointed were cited to sit at any given time. It is important that the Chairman appointed should sit for the length of the council term and that on appointment it

should be mandatory for all members of Licensing Boards to receive appropriate licence training which must include a specific and dedicated course on off-sales.

National Licensing Forums/Local Licensing Forums

The Nicholson committee has also proposed the setting-up of a National Licensing Forum and also Local Licensing Forums for each board area. We would firstly like to support the proposal for a National Licensing Forum which, providing it comprises the relevant representatives from each specific sector of the licensed trade, along with a representative of national government, the health departments and other lobbying groups, should give a balanced forum for reasoned discussion and therefore reasonable and consistent proposals should be generated. It may be that these meetings will become subject driven dependent upon specific problems arising in each sector. Such an agenda can be set by the Chair. This will be expensive to run but if costs are borne throughout each Licensing Board in the country then it should not become financially burdensome at the local level.

We would however have strong reservations regarding the proposals for the setting up of Local Licensing Forums. A great deal more thought must be put into this if they ever come to fruition and it is likely that they would not necessarily represent the feelings of the local community just because a member of that community is appointed.

The issues affecting the off-sales industry are completely different to those affecting the on-trade, and as such we believe these forums would create the potential for becoming “talking shops” and little else. We would rather see the National Licensing Forum be given greater investment whereby it could tour the country on a quarterly basis and hold hearings for local representatives to consider proposing a different approach to deal with specific issues.

The Scottish Grocers’ Federation would like to clearly state that it would desire to be appointed to the National Licensing Forum and to have representatives maintained on it representing the off-sales sector on a permanent basis.

Local Licensing Standards Officers

We believe adequate safeguards for both the local community and local licence holders will be served by the appointment of Local Licensing Standards Officers. These are potentially a good idea and again we would ask that in each board area one with specific insight and training in the off-sales trade be appointed. It must be made clear in any future legislation that these people are not enforcers, but are there to create good liaison and communication between communities, the licensing boards and licence holders.

It is important that the cost of such officers be borne from local authorities budget and not be part of any funding arranged by any future licensing scheme. There will be significant costs attached to such officers and it is important that their role is well defined in order to get good value for money.

Operating Plans

We concur with the proposals to submit Operating Plans for off-licences, but only when the application is for a new licence. We believe that only in the following circumstances an Operating Plan showing the floor layout be required:

- As above on application of a new premises licence.
- For fundamental (structural) changes to the licensed premises.

Training

We generally agree with the proposals in the Nicholson report regarding training and would report that most of his proposals concur with our original submission.

In principle we agree that every person serving from behind the point of sale should have some level of training. We would like to highlight the fact that training for the off-sales sector would be significantly different to that of any other part of the licensed trade.

We understand that a licence holder should hold nationally recognised licence qualifications but we support the idea that there is no requirement for the licence holder to be on the premises supervising casual staff at any given time. The Nicholson Report proposes that this can be done by someone who has undergone 'prescribed training'. We would like this point to be amended to '**appropriate training**'.

Sanctions

As a sector we are very concerned with any move to allow the licensing boards to impose a sanction of withdrawal of the licence. Currently such a sanction can be done but the licensee can continue to trade pending an appeal at the Sheriff Court. We are aware that the current procedures cannot continue as there has been significant abuse of the system over many years whereby licences have been transferred and in some cases sold on during the course of the appeal process. We would like to highlight the fact that this has been far more prevalent in the on-trade than the off-trade to date. The Nicholson Report proposes in Chapter 7, paragraph 13, point 41, that the available sanctions given to a licensing board should range between a formal warning or admonition to revocation of a licence, and in Chapter 7, paragraph 14, that if the licensee has marked an appeal against that decision he or she should be entitled to apply to the local Sheriff for an interim suspension pending the disposal of the appeal. Such a process, given the written requirement of the board's decision within 7 days and the proposed requirement to hear the application within 7 days thereafter, will mean that at least 14 days will go by wherein the off-licensed premises will be unable to sell licensed products. In our sector of the retail industry this would have a devastating effect which would more than likely see the demise of a business as a going concern. We would rather see the following procedure, whereby if the premises licensee concerned has marked an appeal against the decision (i.e. the closure), he or she should be entitled to apply to the local Sheriff for an interim disposal of the sanction pending appeal and during that 14 day period the sanction would not be applied until the local Sheriff has heard the appeal. If as a consequence of this hearing the interim suspension is not granted then the sanction should become effective pending the determination of any appeal by the Sheriff Principal.

Such a process must be permitted to continue. Only a Sheriff retains the confidence of the licensed trade to take such a significant decision.

There are many reasons for this. Firstly the practice of licensing boards up and down the country in matters relating to suspension of, and failure to renew, licences varies enormously. A threat raised at a licensing board for the ultimate sanction of suspension of a licence must be subject to independent checks and balances.

The report states, in Chapter 7, point 21 of the Nicholson Report, that 'Where a personal licence holder has not been charged with or convicted of a relevant offence but is found by the Licensing Board for the area where he is working to have failed to have carried out his duties in an acceptable manner which is consistent with the licensing principles, the Licensing Board should be entitled to impose a sanction which is necessary for the promotion of the licensing principles.' There must be a clear burden of proof,(beyond reasonable doubt as opposed to balance of probabilities) set out and opportunities given to challenge any facts which are in dispute.

Finally we would like to make the point that the legal process in this country presumes that someone charged with an offence is innocent until proven guilty by a court of law. This proposal flies in the face of such a principle.

We would like to see more clarity on the proposals for sanctions available to licensing boards and we would ask that there should be drawn up a list of sanctions pertaining to a specific range of offences. In other words what offences actually endanger the continuation of the Premises License? It would be helpful if the national licensing guidelines could include a detailed list of offences with sanctions applicable.

Miscellaneous

Our final points concerning the Nicholson Report's proposals are of a general nature, and are as follows:

1. With regard to the concern expressed by the Scottish Executive on binge drinking, we believe much of it arises as a result of promotional activity within on-licensed premises. We note that the Nicholson Committee had no major concerns in principle with promotions and discounts as such, giving an example of 6 bottles of wine for the price of 5, which is obviously cited from the off-sales sector. We would concur with this viewpoint and highlight the fact that Nicholson does not believe there is any evidence to suggest that such promotions bring about any undesirable consequences. Irresponsible promotions are a national problem, primarily sponsored, we believe, by the national on-trade public house estate companies and as such we believe that they should not be wholly dealt with at the local level. This is a national problem which requires a national solution and we would ask that at an early stage the National Licensing Forum be called upon to consider the introduction of a National Code of Conduct on promotions.

We have always believed that the off-sales promotional activities are being responsible and have only served to create the basis for free market competition. We would however ask that the Executive consider including one condition on off-sales promotions and that is that any pricing policy must outlaw prices which can be demonstrated to be below cost to a bonafide trader. In other words, supermarkets must not be permitted to pursue a policy of below-cost selling.

2. We would ask that the Scottish Executive promote a policy of 'No Proof, No Sale' to the general public and in addition that they roll out a national proof-of-age card for 14 – 24 year olds, which should be mandatory to supply but voluntary as to whether it is carried.

In conclusion, we believe that these proposals highlight some of the specific concerns of the off-licensed trade regarding the Nicholson Report and put forward sound supportive proposals to adhere to the excellent seven guiding licensing principles as stipulated at the beginning of the Report.

SCOTT LANDSBURGH
Chief Executive
Scottish Grocers' Federation