



SCOTTISH EXECUTIVE

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Criminal Justice Division**

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**Your ref:
Our ref:**

16 August 2001

Dear Consultee

REVIEW OF LIQUOR LICENSING LAW IN SCOTLAND

As you may be aware, the Minister for Justice has recently established a Committee on Liquor Licensing Law in Scotland. I enclose a consultation paper relating to the work of that Committee. The Committee is anxious to receive views and proposals from the widest possible range of individuals and organisations with an interest in the subject, and I hope that you will be willing to respond.

Quite separately from this consultation the Scottish Executive Health Department commenced a consultative exercise earlier this year and sought views to assist in the development of a national Plan for Action on alcohol misuse. This separate but complementary review of liquor licensing law is an integral part of the overall strategic approach to dealing with alcohol misuse.

You may well have responded to the Health Department's invitation to comment and, in so doing, you may already have expressed views on any changes which you consider to be required in the field of liquor licensing law. However, the present consultation paper presents an opportunity to expand on those views should you wish to do so. If, on the other hand, you have nothing to add to the views which you expressed previously, those views will in any event be made available to the Committee on Liquor Licensing Law, and will be taken into account by them.

The remit of the Committee is set out in paragraph 1 of the paper, and the Committee membership is detailed in paragraph 2.

Many questions are highlighted in the second part of the paper (headed "Some of the issues to be addressed") and consultees are invited to respond to these specifically. Comments on other licensing issues not mentioned in the paper are also welcome.



CONSULTEES ARE REQUESTED TO SUBMIT THEIR COMMENTS BY 16 NOVEMBER 2001.

They should be sent to:

David Paul
Scottish Executive Justice Department
Spur W1
Saughton House
Broomhouse Drive
EDINBURGH EH11 3XD

Responses by e-mail should be sent to **liquor.review@scotland.gsi.gov.uk**

Further copies of the consultation paper can be obtained from David Paul at the above address. The paper is also available at **www.scotland.gov.uk/consultations/justice/liquor-00.asp**

A list of those being consulted is at Annex A to this letter. In line with the requirements of the Code of Practice on open government, responses will be made available to the public unless respondents ask for their comments to remain confidential.

Yours faithfully

ALAN OLIVER
Secretary to the Committee on Liquor Licensing Law in Scotland



CONSULTEES

Health Networks

- Health Board Chief Executives Group
- Health Board Health Promotion Managers Group
- Health Board Directors of Public Health
- Royal College of Physicians
- Intercollegiate Group on Alcohol
- Intercollegiate Group on Alcohol Problems
- Royal College of Surgeons of Edinburgh
- Royal College of Physicians & Surgeons of Glasgow
- Royal College of Psychiatrists - Scottish Office
- Scottish Drugs Specialist Committee
- British Medical Association
- Association of Nurses in Substance Abuse
- Royal College of Nursing
- Nursing Council on Alcohol
- Community Psychiatry Nursing Association
- Scottish Association of Health Councils
- Health Education Board for Scotland
- Minority Health Inclusion Project
- Public Health Institute of Scotland
- Community Planning Officers Network
- Royal College of Midwives
- Deans of Medical Schools
- Faculties of Health Studies
- British Dental Association, Scottish Office
- Alcohol Problems Clinic
- Faculty of Accident and Emergency Medicine
- British Red Cross Scotland
- Scottish Drugs Forum

Local authority Networks

- COSLA
- Association of Directors of Social Work
- Association of Directors of Education in Scotland
- Local Authority Chief Executives
- SOLACE (Scotland)
- SOLAR
- All Scottish Local Authority Licensing Board Clerks

Education

- Association of Head Teachers in Scotland
- Head Teachers Association of Scotland
- Headmasters' Conference Secretary (Scotland)
- Educational Institute of Scotland
- EIS Association of Lecturers in Colleges of Education in Scotland
- Association of Primary Teachers
- General Teaching Council
- Professional Association of Teachers

- Scottish Secondary Teachers Association
- Scottish Council for Independent Schools
- Scottish Independent Special Schools Group
- Catholic Education Commission
- Catholic Head Teachers Association of Scotland
- Catholic Head Teachers Association for Primaries in Scotland
- Christian Education Movement
- Community Learning Scotland
- Scottish Vocational Education Council
- Scottish Association of Community Education
- Learning and Teaching Scotland
- National Commission on Education
- Association of Education Advisers
- NASUWT
- Scottish School Board Association
- Scottish Parent Teacher Council
- Scottish Parents Information Network
- Scottish Council for Research in Education
- NUS Scotland
- The Committee of Scottish Higher Education Principles (COSHEP)
- Faculty of Law University of Dundee
- Faculty of Law University of Edinburgh
- Faculty of Social Sciences and Law University of Aberdeen
- Faculty of Law University of Glasgow
- Faculty of Law University of Strathclyde

Women's Issues Groups

- Women's Health Working Group
- Network of Ecumenical Women in Scotland
- Glasgow Women's Library
- Glasgow Council for the Single Homeless
- The Women's Safety Centre
- Edinburgh Women's Training Centre
- British Federation of Women Graduates
- Resolutions
- Scottish Joint Action Group
- Engender
- Women's Forum Scotland
- Women's National Commission
- Scottish Women's Aid

Children's and Young People's Groups

- Scottish Youth Issues Unit
- Scottish Youth Parliament
- Aberlour Child Care Trust
- Barnardos, Scotland
- Children 1st
- Parentline Scotland c/o Children 1st
- Childline Scotland
- Young Scot
- NCH Action for Children
- Who Cares? Scotland
- Children in Scotland



- The Scottish Parenting Forum c/o Children in Scotland
- Save the Children
- Fast Forward
- YMCA
- Scottish Independent Nurseries Association
- Fairbridge in Scotland
- Feisean nan Gaidheal
- Girls' Brigade
- John Muir Award
- Outward Bound Scotland
- Phab Scotland
- Prince's Trust
- Frontier Youth Trust
- Guide Association Scotland
- Ocean Youth Trust Scotland
- Scottish Development (Young People)
- RSPB Scotland
- Air Training Corps
- Boy's Brigade
- Campaigners (Scotland)
- Catholic Youth Council (Scotland)
- Church of Scotland (Youth)
- CSV Scotland
- Army Cadet Force
- Boys' and Girls' Clubs of Scotland
- BTCV Scotland
- Commonwealth Youth Exchange Council
- Duke of Edinburgh's Award Scheme
- Save the Children
- Scottish Centres
- Scottish Wildlife Trust
- Scottish Youth Hostels Association
- Scripture Union Scotland
- SSC
- Scottish Association of Young Farmers' Clubs
- Scottish Children Reporter's Association
- Scottish Crusaders
- Scottish National Council of YMCAs
- Scottish Youth Dance
- Scout Association
- Sea Cadets
- Tak Tent Cancer Support Scotland
- Venture Scotland
- Youth Clubs Scotland
- YWCA of Great Britain Scottish National Council
- West Lothian Youth Theatre
- Woodcraft Folk
- Youth Link Ayrshire

Legal Bodies

- The Lord President
- The Law Society of Scotland
- Dean of the Faculty of Advocates



- The Sheriffs Principal
- Sheriffs Association
- District Courts Association
- Temporary Sheriff's Association
- Procurator Fiscal's Society
- Glasgow Bar Association
- Edinburgh Bar Association

Faith Groups

- Scottish Inter Faith Council
- Action of Churches Together in Scotland
- Evangelical Alliance Scotland
- Glasgow Jewish Representative Council
- Islamic Centre
- Free Church of Scotland
- Free Presbyterian Church of Scotland
- Church of Scotland Parliamentary Office
- Principal Clerk to the General Assembly

Business organisations

- Institute of Directors
- Scottish Council of Development and Industry
- CBI Scotland
- Federation of Small Businesses
- Forum of Private Businesses (Scotland)
- Scottish Chamber of Commerce
- Scottish Engineering
- Scottish Retail Consortium
- Gin and Vodka Association
- Scotch Whisky Association
- Scottish Licensed Trade Association
- Inverness, Highland and Islands Trade Association
- North East Trade Association
- South East Trade Association
- South West Trade Association
- Strathclyde Trade Association
- Tayforth Trade Association
- West Coast Trade Association
- Scottish Consumer Council
- Scottish Grocers Federation
- Brewers and Licensed Retailers Association
- British Institute of Innkeepers
- Wines and Spirits Association

Partnerships

- ASCC
- Childcare Partnerships
- Glasgow Alliance
- Capital City Partnership
- Scottish Trade Union Congress
- Social Inclusion Partnerships
- Scottish Social Inclusion Network
- Volunteer Development Scotland



- Scottish Civic Forum
- Scottish Homes
- Citizens Advice Scotland
- Scottish Council for Voluntary Organisations
- Chinese Community Development Partnership

Equalities Groups

- The Equal Opportunities Commission
- The Commission for Racial Equality
- The Disability Rights Commission
- The Equality Network
- Disability Rights Commission
- Scottish Council for Racial Equality
- Scottish Traveller Consortium
- West of Scotland Racial Equality Council
- Fife Racial Equality Council
- Grampian Racial Equality Council
- Tayside Racial Equality Council
- Central Scotland Racial Equality Council
- Edinburgh and Lothians Racial Equality Council
- Scottish Gypsy/Travellers Association
- Positive Action in Housing
- BEMIS
- Inclusion Scotland
- Scottish Disability Equality Forum
- Enable
- SENSE Scotland
- Capability Scotland
- RNIB
- RNID
- Scottish Association for Mental Health
- Gay Men's Health

Alcohol and Drug Services

- Scottish Council on Alcohol
- The Association of Managers of Alcohol Services
- AMCC Chairs Association
- DAT Association
- Alcoholics Anonymous
- Samaritans
- Scottish Council for Single Homeless
- Scottish Refugee Council
- Scottish Tourism Forum
- Age Concern (Scotland)
- AL Anon
- National Drugs Helpline
- Scotland Against Drugs
- Scottish Drugs Forum
- Association of Managers of Alcohol Agencies in Scotland (AMAAS)

Criminal justice and policing

- Association of Chief Police Officers in Scotland
- Association of Scottish Police Superintendents



- Scottish Police Federation
- SACRO
- Victim Support

Academics

- Prof. Gerard Hastings, Director, Centre for Social Marketing, University of Strathclyde.
- Greg Philo, Research Director, Glasgow Media Group, Glasgow University
- Martin Plant,
- Jonathan Davies,
- Howard Jones,
- Candace Currie, (RUHBC) Royal Edinburgh University, Behavioural Changes

General

- Marcus Grant, President, International Centre for Alcohol Policies
- Frank E Gerstenberg
- Currie Community Council
- All MSPs/MPs
- STUC
- Edinburgh Old Town and South Side Trust
- Visit Scotland
- Dumfries and Galloway Tourist Board
- Edinburgh and Lothians Tourist Board
- The Highlands of Scotland Tourist Board
- Kingdom of Fife Tourist Board
- Orkney Tourist Board
- Perthshire Tourist Board
- Scottish Borders Tourist Board
- Shetland Islands Tourist Board
- Western Islands Tourist Board
- Argyll, the Isles, Stirling, Loch Lomond & the Trossachs
- Grampian Highlands, Aberdeen and the North East Coast
- Ayrshire and Arran Tourist Board
- Angus and Dundee Tourist Board
- Greater Glasgow & Clyde Valley Tourist Board
- Sir Crispin Agnew
- Ms Heather Baillie
- Dr Bruce Ritson

COMMITTEE ON LIQUOR LICENSING

LAW IN SCOTLAND

A CONSULTATION PAPER

The Committee

1. On 28 June 2001 Mr Jim Wallace, the Justice Minister, announced the appointment of an independent Committee to review liquor licensing law and practice in Scotland. The Committee's terms of reference are:

“To review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public order; to recommend changes in the public interest; and to report accordingly.”

2. The Chairman of the Committee is Sheriff Principal Gordon Nicholson QC, and the Committee members are:

Mr William Anderson, Executive Director of the Central Scotland Council on Alcohol

Professor Peter Brunt CVO OBE, Physician to The Queen in Scotland

The Rt Hon Menzies Campbell CBE QC MP, formerly a member of the Clayson Committee

Mr Jack Cummins, Solicitor, author of *Licensing Law in Scotland* (2nd ed. 2000)

Councillor Tom Holmes, Convenor, COSLA Liquor Licensing Boards Network

Mr Simon Jaquet, Chief Executive, Youthlink

Ms Patricia McIlquham, Director of Support Services, Dundee City Council

Mrs Maureen McKerrow, President, Scottish Licensed Trade Association

Mr Gordon F Miller, Chief Executive and Secretary, Brewers and Licensed Retailers' Association of Scotland

Sir John Orr QPM, formerly Chief Constable, Strathclyde Police

Sheriff Ian Peebles QC, Glasgow Sheriff Court

Dr Helen Zealley, formerly Director of Public Health for Lothian Health Board

The background

3. Liquor licensing legislation has its origins in the desire of governments to exercise social control on the drinking habits of the population and to control the manufacture and sale of alcoholic liquor as a source of revenue. It is thought that the first licensing legislation for Scotland was an Act of 1756, and the first traces of the present system were introduced by an Act of 1802 with the system becoming established in something like its present form by the Home Drummond Act of 1828.

4. Further legislation followed throughout the 19th century, and towards the end of that century it became clear that consolidating and amending legislation was necessary. A Royal Commission was accordingly appointed in 1896 and, following on its report, the Licensing (Scotland) Act 1903 was enacted. That Act made radical changes and, amongst other things, it introduced the system of registration for clubs which still exists to this day. It also forbade the sale of liquor on Sundays except to travellers.

5. A Royal Commission under the chairmanship of Lord Mackay was appointed in 1929, but the members of that Commission were not unanimous, and no legislation followed. In the result the 1903 Act remained the basis of licensing legislation and practice for many decades subject only to some minor modifications, with the whole legislation being consolidated in the Licensing (Scotland) Act 1959. In the year when that Act was passed a departmental committee on Scottish licensing law was appointed under the chairmanship of Lord Guest. As a result of that committee's deliberations there was passed the Licensing (Scotland) Act 1962 which provided for standard permitted hours for the whole of Scotland and for Sunday opening, albeit restricted to hotels and to certain premises providing meals.

6. Finally, in 1971 a committee under the chairmanship of Dr Christopher Clayson was appointed with a broad remit not dissimilar to the remit of the present Committee. The Clayson committee made extensive recommendations which resulted in the Licensing (Scotland) Act 1976. Subject to some amendments introduced in 1990, 1992, 1993 and 1996 that Act remains the basis for licensing law and practice in Scotland at the present time.

The case for further review

7. Nearly 28 years have now passed since the date when the Clayson committee presented its report, and in that period much has changed both in relation to social attitudes to drinking and in relation to the manner in which, and the sources from which, liquor is bought and sold. There has been growing concern about the health implications of, for example, binge drinking on the part of the young of both sexes; and those with a concern for public order have become increasingly alarmed at the links between over-consumption of alcohol and the commission of crimes, in particular crimes of violence. Furthermore, in the years since the passing of the 1976 Act there have been many decisions by the courts, some of which have exposed weaknesses in the legislation and some of which have resulted in some uncertainty as to how certain provisions in the Act should be interpreted.

8. Against that background Mr Henry McLeish, then Minister for Home Affairs at the Scottish Office, spoke at an annual licensing conference in 1997. He told the conference that while, at that time, there were no immediate plans for legislative change, he would welcome the practical views of those actually operating the legislation. In the result responses were received from a number of interested organisations, and the main points which emerge from those responses are summarised later in this paper.

9. Further developments took place following on the creation of the Scottish Parliament. The White Paper, *Towards a Healthier Scotland*, announced the creation of a new advisory committee on alcohol misuse. That committee, the Scottish Advisory Committee on Alcohol Misuse (SACAM) was established in April 1999 under the chairmanship of Malcolm Chisholm, MP, MSP, and its membership brings together experts from health, police, local authorities, licensing authorities, the voluntary sector and the drinks industry. SACAM's formal remit is "to advise the Scottish Executive on policy, priorities and strategic planning in relation to tackling alcohol misuse in Scotland". As can be seen, SACAM's task is not primarily directed towards legislative reform, and to that extent it is different from that given to the Committee on Liquor Licensing. On the other hand, the objectives of the two groups are obviously complementary, and it is to be anticipated that they will liaise closely.

10. In addition to all of the foregoing a comprehensive review of liquor licensing law is supported by ACPO(S), by COSLA, and by the Law Society of Scotland. There may well be disagreement as to what the outcome of that review should be, but there appears to be unanimity on the need for it.

Some background facts

11. The Committee will be commissioning some new research to assist it in its task. However, a certain amount of factual information is already available which is illustrative of some of the considerations which will require to be taken into account. A few examples will provide something of a flavour (most, but not all, derived from official Scottish Executive or Scottish Office publications and statistics) -

- In 1980 there were 13,892 liquor licences in force in Scotland. By 2000 that number had risen to 17,244 though that number had been fairly constant for the previous five years.
- The increase in licences between 1980 and 2000 is mainly accounted for by an increase in restaurant licences (from 921 to 1,476); by an increase in entertainment licences (from 169 to 828); by an increase in refreshment licences (from 34 to 495); and by an increase in off-sale licences (from 4,899 to 6,368). There was also some increase in the number of public house licences, but the number of hotel licences dropped from 2,959 to 2,491.
- 33% of adult males are regularly exceeding recommended drinking limits.
- 15% of women exceed the recommended limits.
- Women in non-manual classes are more likely to exceed recommended weekly limits
- 30% of the alcohol consumed in a typical week in Scotland is drunk by only 3% of the total population, and this group consists almost entirely of men.
- Of those aged over 28 some 5% say that they regularly drink in order to get drunk. Among the under 25s this proportion increases to 17%.
- Of the cities, Edinburgh has the highest number of licences per 100,000 population (42) while Glasgow has the least at 28 per 100,000 population.
- There is a higher concentration of hotel licences in rural areas along with a lower concentration of public houses than average whereas the reverse is true of urban areas.
- There were 111 deaths in Scotland caused by a fire during 1999-2000. Alcohol was a key factor in almost half of all deaths in house fires.
- Recorded cases of drunkenness fell by 9% to a total of 7,800 in 1999, the lowest number recorded in the past ten years.

- Drunk driving offences rose by 2% to total 10,800 in 1999.
- It is estimated that of the 1,500 adult pedestrians killed each year some 30% are above the legal driving limit.
- Reports by the Scottish Prison Service reveal a clear link between alcohol and drug abuse and a pattern of offending.
- Deaths in Scotland directly related to alcohol more than doubled between 1990 and 1999
- Between 1980 and 2000 a fivefold increase in acute admissions to general hospitals associated with the consumption of alcohol brought the Scottish total to 28,443 – contributing to the growing demands for hospital care.
- The 2000 Scottish Crime Survey revealed that in 61% of incidents of violence the victims believed that their attackers were under the influence of alcohol. This is much higher than the figure for England and Wales which the 1999 Crime Survey estimated to be 40%.
- A study in Norway revealed that, during a nine week strike by employees of a state owned wine and spirit manufacturer, there was a 20-30% reduction in consumption of alcohol together with a 20% reduction in the number of incidents of domestic violence and a 15% reduction in incidents of other interpersonal violence reported to the police.
- A Home Office all party working group which reported in 1995 found that, when “drinking up” time in England and Wales increased from 10 to 20 minutes, there was a reduction in disorder at closing time.

12. The foregoing gives, as has been said, no more than a flavour of the factual background against which the Committee will require to fulfil its remit. But what are the issues which it will require to address, and what are the topics on which it will be seeking evidence and representations from all those with an interest in licensing law and practice? Some of those are to be found in the responses which were received by the then Scottish Office following on the speech delivered by Henry McLeish in 1997 (see para. 8 above). Those responses have also more recently been echoed to a large extent by those who commented on a consultation undertaken early in 2001 by the Health Department on behalf of SACAM. In what follows the various topics are not set out in any perceived order of importance.

Some of the issues to be addressed

Licensing Boards

13. Should the licensing system remain, as at present, largely in the hands of Licensing Boards whose members are drawn from local authority Councillors? If so, should some sort of training be made available to those Councillors who are members of the Boards? Should any such training be a prerequisite before sitting as a member of the Board? Should it be made unlawful for the actual composition of a Board to change in the course of a single sitting? (It has been said that this happens in some areas with the consequence that there may be no consistency of approach during a sitting.) Should there be model byelaws to ensure that Licensing Boards throughout Scotland all operate in a consistent and predictable manner? Should Licensing Boards be required to prepare and to publish policy statements giving notice of particular considerations to which they are likely to have regard when considering whether to grant or to refuse a licence application? Is it acceptable that there should be policy variations in different parts of the country?

14. Should the procedures before Licensing Boards be simplified and made more user-friendly? It has been suggested by some commentators that the present procedures are unduly legalistic and that they operate in a manner which presents insurmountable obstacles for those who wish to object to a licence application. Is the range of those entitled to object sufficiently wide? Are the grounds upon which a licence may be refused appropriate and acceptable, or should they be modified in some way? Are the procedures sufficiently flexible, for example in relation to time limits, so as to ensure that all concerned can have a fair hearing? Should Boards continue to be required, as at present, to have fixed quarterly meetings, or should there be more scope for arranging meetings as and when they are required? Is there a case for permitting Licensing Boards to delegate certain matters either to Committees of the full Board or indeed to the Clerk to the Board?

Licences

15. At present the 1976 Act makes provision for seven different types of licence, namely (1) a restricted hotel licence; (2) a hotel licence; (3) a public house licence; (4) a restaurant licence; (5) a refreshment licence; (6) an entertainment licence; and (7) an off-sales licence. Additionally, the Act also makes provision (in Part III) in relation to the licensing of seamen's canteens, though it may be that that part of the Act has now fallen into desuetude. So far as the seven main forms of licence are concerned it has been suggested that they simply lead to confusion and that they should be replaced by a single form of licence to which a Licensing Board would be entitled to add conditions so as to make the licence appropriate for the type of premises concerned and for the type of business to be conducted. In that event it has been suggested that there should be a right of appeal to the sheriff against any condition which is perceived as being unreasonable or unnecessary. Some commentators have indicated concern at what they

perceive as an insufficiently controlled use of the provisions relating to occasional permissions. It has also been suggested that in future the system should provide for a licence for premises and a separate licence for persons who are authorised to operate licensed premises. It is thought that this would allow for some people to be licensed to operate certain types of licensed premises but not others. It is also thought that it might simplify and speed up procedures for transfer of licences. A further suggestion is that there ought to be some system for the licensing of door stewards.

16. At present various forms of training are available for licence holders. It has been suggested, however, that in future there should be a national minimum training standard which would be a precondition for the grant of a licence.

Licensing hours

17. Is there a case for changing the present system of permitted hours? Indeed, should the concept of permitted hours be dispensed with altogether? Should the present system for extensions to permitted hours be replaced with something else? One commentator has suggested that Licensing Boards should be empowered to grant licences up to a maximum of 15 hours per day, seven days a week, with the actual length of the permitted hours being at the discretion of the Board depending on the nature of the premises and the nature of the business conducted there. Would that be a workable solution?

18. Is the present system of Childrens' Certificates acceptable? Is greater flexibility, and an extension of permitted hours, required to deal with the circumstances in which a person under the age of 18 can enter licensed premises other than a public house? Should further provision be made, as was proposed by the Clayson Committee, whereby persons under the age of 18 might be permitted greater entry into public houses in the company of an adult and subject to certain conditions?

19. The 1976 Act presently permits a further period of 15 minutes after the end of the permitted hours for customers to consume drinks which they have purchased in a public house during the permitted hours (usually referred to as "drinking up time"). Some commentators have suggested that there might be benefit if that period were to be extended to 30 minutes.

Under-age drinking

20. Should there be a national proof of age system? If so, should that take the form of a national identity card or some other form? How could any such scheme be linked to offences in relation to supplying persons under the age of 18?

Off-sales licences

21. Some commentators have suggested that, in order to achieve better control of sales, liquor and tobacco for sale in large mixed outlets such as supermarkets should be

available only in self-contained units within these stores with purchases having to be paid for within those units rather than at a general checkout point which may be manned by someone who is himself or herself under the age of 18. Salespersons in self-contained units should themselves be of or over that age. It is not clear, however, how such a regime could operate in small shops which sell a limited range of alcohol along with general groceries, newspapers, and the like.

Registered clubs

22. For many years there has been what many perceive as an anomaly in the licensing system in that social, sporting, and other clubs are not licensed by Licensing Boards but instead are registered by the sheriff. It has been suggested that clubs should in future be subject to the normal licensing system operated by the Licensing Boards. On a related point there is concern in police circles that, under the present system, they have no automatic right of entry into registered clubs without a warrant. If clubs were to be brought under the normal licensing system the police would have such a right.

Suspension of licence

23. Under section 31 of the 1976 Act a Licensing Board may suspend a licence if it considers that a complaint on one or more specified grounds has been made out. However, concern has been expressed by some commentators about the fact that, where the licence holder takes an appeal against that decision to the sheriff, and possibly thereafter to the Court of Session, the suspension does not take effect while that appeal procedure is in progress. It is suggested that it is not in the public interest that a licence holder should be permitted to continue trading, possibly for many months or even longer, when a Licensing Board has reached the conclusion that a ground of complaint has been established and that it is not in the public interest that the licence should continue in force.

Appeals

24. Are the present appeal provisions satisfactory? At present the 1976 Act makes provision for an appeal to the sheriff in respect of certain decisions taken by a Licensing Board, but no such provision is made in respect of certain other decisions. Some of those other decisions can in effect be appealed by means of judicial review in the Court of Session but that is likely to be slower and more expensive than an appeal to the sheriff. Should a new licensing appeals tribunal be established? Alternatively, and on the assumption that the sheriff court is to remain as the normal court of appeal, should new legislation take a different approach from that found in the 1976 Act and in effect provide that an appeal is to lie to the sheriff in respect of all matters except, possibly, where an appeal is expressly excluded in the legislation? A further issue in respect of appeals relates to the position of Licensing Boards. At present they are entitled to be a party in appeals, and in practice they are frequently represented at

appeal hearings. However, some Boards have observed that this is anomalous. A sheriff, for example, is not a party when a decision in the sheriff court is subsequently appealed to the Court of Session. On the other hand, it is arguable that there is a distinction between a decision by a sheriff, which is judicial in character, and a decision by a Licensing Board which is largely administrative in character. Should the provisions dealing with this matter be revised?

Happy hours

25. Increasingly, many licensed premises provide what are known as “happy hours” when alcoholic drinks are sold at less than their normal price. The view is taken by some that this increases the risk of over-indulgence with consequential risks to health and to public order. Should the practice of having “happy hours” be prohibited, or would that be seen as an unfair interference with the trading practices of licence holders who might argue that “happy hours” in the licensing trade are comparable to “loss leaders” in the business of supermarkets and others?

E-commerce

26. Alcoholic products are no different from other products such as clothing, books, or motor vehicles, in that they can increasingly be purchased electronically through the internet. Many supermarkets now make provision for internet shopping not only in respect of conventional groceries but also in respect of wines and spirits. In addition a growing number of small retailers have set up in business as, for example, wine merchants in circumstances where their whole business is conducted through the internet. They have no retail premises in the conventional sense, and their internet “address” may not be at a place where they physically have any store of the products which they are selling. Indeed, the “licensed premises” in the sense understood by the 1976 Act may be no more than part of a living room or bedroom in the retailer’s private home.

27. Such a development could not have been foreseen when the 1976 Act was being drafted and, as a consequence, it contains no provision which is designed to cater for this kind of situation. However, it seems desirable that new licensing legislation should do so explicitly. But that raises a number of difficult questions. How, for example, is one to define “licensed premises” when the alcoholic liquor sold by an internet retailer may actually be stored in a variety of places, some of which may not even be in Scotland, or even in the United Kingdom? How is the concept of “permitted hours” to be applied in a situation where a potential purchaser may access the seller’s internet site at any time of the day or night? How can under-age drinking be controlled in the context of internet shopping? These are but a few of the questions to which answers are required.

Other matters

28. While the foregoing provides a brief summary of the main points made by commentators in recent years, there is no doubt that many other matters will arise for consideration by the Committee. Some will no doubt be of a fairly technical kind, and will relate to court decisions over the last 25 years or so which have put in doubt the meaning or intention of provisions in the 1976 Act. There are, however, two other issues of central importance which the Committee will have to consider with care.

29. The first arises from the coming into force of the Human Rights Act 1998. That Act has already had a substantial impact on many aspects of Scottish law and practice, and it would be naïve to suppose that it does not have a potential impact on licensing law and practice. The extent of that impact will have to be considered in detail by the Committee, and it will be helpful if consultees can draw attention to particular issues which are likely to be of significance.

30. The second issue of importance which the Committee will require to consider arises directly from its terms of reference. As mentioned earlier, these terms of reference require the Committee to review liquor licensing law and practice “with particular reference to the implications for health and public order”. It is not immediately clear how changes to licensing law and practice are likely to have a major impact on public health or on public lawlessness. No doubt, changes such as the introduction of a national proof of age system might have some beneficial consequences; but to achieve more major consequences it might be necessary to carry through reforms which could be regarded as undesirable for social and other reasons. When the minimum age for purchasing alcohol was increased in the United States from 18 to 21 in the 1980s it was found that this was followed by a decrease in fatal car accidents and by a decline in arrests for vandalism and disorderly conduct in the region of about 10%. That was no doubt a desirable outcome of the change: but there might be considerable opposition to any proposal to change the minimum drinking age in this country in the same manner as occurred in the United States. A further matter of which note must be taken is that increasingly a great deal of crime and public disorder is associated with the use of illegal drugs. Sometimes that is also linked to the over-consumption of alcohol, but that is not always the case. That too is something which may limit the extent to which reform of liquor licensing law can have a direct impact on public health or public order. It is to be hoped, however, that the Committee will receive many suggestions for changes which will not be merely technical in character but which may also be beneficial in the wider context.

The way ahead

31. Delivering judgment in a licensing appeal in 1988 Lord Clyde said that it was difficult “to find a clear pattern or consistent philosophy” in the 1976 Act. That observation may have been less than fair in relation to the Act as a whole. However, social and other circumstances have changed radically since 1976, and the approach to the sale and consumption of alcohol has also undergone major changes during that period. Moreover, more and more people now travel abroad, not only in Europe but also further afield, and there is a greater awareness of how the sale and consumption of alcohol is dealt with elsewhere. The present Committee hopes that the outcome of its review will result in what Lord Clyde called a clear pattern and a consistent philosophy, but it recognises that that may be quite different to-day from what it was in the 1970s. It is hoped that the input of consultees will not only assist the Committee in relation to the matters of detail which have been highlighted earlier in this paper but also will assist in the determination of a pattern and philosophy for liquor licensing in Scotland which will be acceptable and relevant both at present and for many years to come.

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Further copies of this Consultation Paper may be obtained from:

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