

City of Glasgow Licensing Board

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Ms Millar

13 September 2007

Ian Fairweather
Criminal Law & Licensing Division
Criminal Justice Directorate, Scottish Executive
St. Andrew's House
Edinburgh

Dear Ian

LICENSING (SCOTLAND) ACT 2005
RELEVANT OFFENCES
CONSULTATION ON DRAFT REGULATIONS

On behalf of the City of Glasgow Licensing Board I provide the following comments in relation to the draft Licensing (Relevant Offences) (Scotland) Regulations 2007.

The City of Glasgow Licensing Board has always been concerned regarding the move away from the "fit and proper person" test set out in the Licensing (Scotland) Act 1976. Having moved away from that test, I can understand why it would be necessary to produce a list of relevant offences but my concern would be that in drafting up an exhaustive list of offences, there is a real danger that something will be omitted given that the list is fairly prescriptive.

I would also comment that by providing a prescriptive list of offences, this will not cover any new statutory offences which may be prescribed in future legislation and therefore regular amendments to these regulations will be required.

With regard to your request for comments in relation to other suggested offences and whether they should relate to one conviction or an accumulation of convictions, in my view this is a matter which should be left for comment by the Chief Constable.

I should be obliged if the above comments could be taken into account when finalising the terms of the draft Regulations.

STATEMENT OF REASONS - CONSULTATION ON PROPOSED FORMAT

I refer to the above consultation and now provide the following comments on behalf of the City of Glasgow Licensing Board.

With regard to the proposed format of the Statement of Reasons, I have no difficulty with the matters covered in each of the boxes but would suggest that the wording under the note for preliminary issues should be revised to be more legalistic in nature and not refer to terms such as "that kind of thing".

While the actual content of the proposed Statement of Reasons does not concern me, I am concerned regarding the overall procedure for producing Statements of Reasons and Stated Cases. It is our

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understanding that the Stated Case procedure is predicated on the theory that evidence has been led, the credibility of witnesses has been tested and thereafter a Judge makes the decision. This does not sit comfortably with decisions of the Licensing Board, which is a quasi-judicial administrative body, which does not allow for hearing from witnesses on oath etc and therefore there are no findings as to credibility/reliability or "facts proved or admitted".

As a Stated Case procedure requires each party to state their case to the Court and present their findings in fact, based on issues such as credibility etc., the Licensing Board as a quasi-judicial administrative body is simply not designed to meet such exacting requirements.

Over and above these difficulties, there will be significant additional costs associated with having to prepare both a Statement of Reasons and then a Stated Case, together with having to arrange adjustment hearings and other procedural steps. The impact of these proposals could be reduced if Ministers were minded to revert to the system which had been agreed at a meeting of the transitional group in Perth on 7 December 2006 where it was agreed that ***the Statement of Reasons should take the form of a draft Stated Case.***

Given the above, I would strongly urge Ministers to readdress the whole issue surrounding Stated Case and the Statement of Reasons.

Kind regards.

Yours sincerely

Mairi Millar
Assistant Clerk