

FROM THE OFFICE OF THE CHIEF EXECUTIVE

Criminal Law & Licensing Division  
Criminal Justice Directorate  
Scottish Government  
GW.14  
St Andrews House  
Edinburgh EH1 3DG

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

14<sup>th</sup> September 2007

Dear Sir/Madam

**Response to the Scottish Government's Consultation on Draft Regulations setting out relevant offences under the Licensing (Scotland) Act 2005, the 2005 Act, and to the proposed form of a board's statement of reasons**

I refer to the document above and enclose the response of the Scottish Beer and Pub Association (SBPA) and the British Hospitality Association (BHA) in Scotland to the specific questions raised by your consultation and offer our general comments on the document.

The Scottish Beer and Pub Association (SBPA) was originally formed in 1906. Our members are Scotland's brewing and large pub companies representing the licensed trade industry in Scotland. The main aim of the Association is to contribute to the economic and social well being of Scotland through employment, investment and training. The SPBA's members include Scottish & Newcastle UK, Tennent Caledonian Breweries, Carlsberg UK, Belhaven Group, The Caledonian Brewing Company, Diageo, Broughton Ales, Scottish and Newcastle Pub Enterprises, The Spirit Group, Mitchell and Butlers, Punch Taverns, SAB Miller & Maclay Group.

Our members account for 1,500 of the 5,200 licensed public houses in Scotland. The Association promotes the responsible sale of alcohol and management of licensed premises. In collaboration with the British Beer and Pub Association (BBPA), my Association has a range of good practice information and guidance for member companies, which includes security in design, drugs, drinks promotions, noise control and health and safety.

The BHA is the national association for the hotel, restaurant and catering industry and it has been representing the hotel, restaurant and catering industry for over 90 years. The BHA represents some 3,000 establishments in Scotland, across all sections of the industry – not just group-owned properties, but also hundreds of individually owned hotels and restaurants.

**SBPA and the BHA in Scotland have considered the terms of the draft regulations "The Licensing (Relevant Offences) (Scotland) Regulations 2007" and whilst generally supportive of the contents of the draft Regulations would make the following specific comments and observations.**

.../

## Introduction Notes Number 2.

We would comment that the requirement for applicants and licence holders to notify is quite onerous and the penalties for not doing so are quite high. It may be that the penalties should be reduced and reviewed after say three years of actual experience.

## Introduction Notes Numbers 7 & 8.

In terms of sections 73 and 74 of the 2005 Act, a board must hold a hearing for the purposes of considering and determining the application where the Chief Constable has responded to a board by notice specifying convictions of the appellant in terms of section 73. **There seems to be an error in paragraph 2 of the introductory notes in that it states that in the case of a personal licence application a person would be "ineligible" should he or she have been convicted of a relevant or foreign offence.**

We would not agree with the suggestion that "In all cases we consider that a single conviction for the offence is sufficient."

**We doubt it is reasonable for any single conviction, regardless of its nature or seriousness, to automatically give rise to a hearing and would suggest that some minimum level should be set.**

Indeed, we would highlight that during the considering of the 2005 Act in the Scottish Parliament in 2005, the then Scottish Executive's Licensing Minister, George Lyon MSP, indicated during evidence to the Local Government and Transport Committee on 3<sup>rd</sup> October 2005 [Column 2943 - <http://www.scottish.parliament.uk/business/committees/lg/or-05/lq05-2602.htm#Col2928>]:

*"The bill already allows ministers to prescribe offences that are to be relevant offences for the purposes of the new licensing regime. Amendment 94 will go one step further and allow the persistent commission of a lower-level offence—which would not by itself be sufficiently serious—to amount to a relevant offence. Convictions for a relevant offence may result in the board refusing to grant a licence or the review of a licence. A review may, of course, ultimately lead to loss of the licence.*

*"One use to which the regulation-making power is intended to be put is to make additional links between the bill and the Smoking, Health and Social Care (Scotland) Act 2005. Section 1 of that act makes it an offence for a person with management and control of no-smoking premises knowingly to permit others to smoke. There is a further offence under section 3 for such a person to fail to display warning notices.*

*"We consider that people with management and control will include the premises manager and could include the premises licence holder. It is our intention that the offences under sections 1 and 3 of the Smoking, Health and Social Care (Scotland) Act 2005 should be relevant offences for the purposes of the bill for both personal and premises licence holders.*

*"It is right and proper that a licensee should face consequences in relation to his licence for smoking offences. However, we do not feel that it would be appropriate to initiate the potentially fairly serious consequences for licensees over a single commission of a lower-level offence. We intend instead that regulations will specify that lower-level offences, including the smoking offences, must be committed on three occasions before being treated as relevant offences. Amendment 94 ensures that the general concept of persistent commission of offences is recognised in the bill and can be used when we are drafting regulations."*

Clearly therefore, this statement in Note 8 is not consistent with assurances given to, and intent of Ministers, in the Scottish Parliament, and does not recognise the argument, which was conceded by Ministers themselves, that it only multiple commissions of certain offences which should give rise to these offences being considered as "relevant" for the purposes of the 2005 Act, and that these would be defined in regulation.

We therefore believe the regulations should be amended to bring them into line with the assurances given to and accepted by the Scottish Parliament. Thus far no attempt seems to have been made in the regulations to deliver this. .../

We would also ask that the position in regard to spent convictions, which have often been an issue in the past at licensing boards, please be spelt out in the regulations for the avoidance of any doubt as to their relevance to licensing boards in considering any matters. Our view would be that if a conviction is indeed spent then it can and should be of no relevance to a licensing board.

#### **Introduction Notes Number 12**

In relation to Note Number 12, “We would also welcome comments on whether we should also add convictions for “attempted crimes” relating to those set in the draft. It is however recognised that section 294 of the Criminal Procedure (Scotland) Act 1995 provides that attempts to commit an indictable crime is itself an indictable crime, and similar for offences punishable summarily. We would also welcome comments on whether offences of aiding and abetting, counselling, procuring and inciting any of the listed offences should also be relevant offences.”

Our response would be that if the appropriate authorities have not chosen to pursue an indictable “attempted” crime, then it would be wholly unreasonable for this to be considered by licensing boards, but that it may be appropriate for “offences of aiding and abetting, counselling, procuring and inciting” a selected group of the more serious listed offences, for example relating to violent offences or those more closely related to the operation of a licensed premises, should also be considered relevant offences, but again these would have to be differentiated in the Regulation.

#### **Schedule – Relevant Offences – Parts 1 & 2**

We would highlight as previously intimated that we feel the list of relevant offences as set out in the Regulation is too onerous and generalistic and seems to have become a “catch all” schedule.

We would highlight the fact that the list of relevant offences under the terms of the Licensing Act 2003 for England and Wales is far shorter ([http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030017\\_en\\_17#sch4](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030017_en_17#sch4)) than that suggested for Scotland, even allowing for additional requirements imposed on the 2005 Act by specifically Scottish pieces of legislation like, for example, the Civic Government (Scotland) Act 1982.

We would therefore question why, if the Licensing Act 2003 does not include pieces of legislation like those listed below, it should be felt necessary to include them in the context of the Licensing (Scotland) 2005 Act, given that both pieces of legislation are seeking to achieve a list of relevant offences:

- 5. An offence under the Pharmacy Act 1954 (c.61).
- 12. An offence under the Immigration Act 1971 (c.77).
- 13. An offence under the Poisons Act 1972 (c.66).
- 14. An offence under the Lotteries and Amusements Act 1976 (c.32).
- 20. An offence under any of the following provisions of the Civic Government (Scotland) Act 1982 (c.45) ... (h) Part V (public processions).
- 23. An offence under either of the following provisions of Schedule 2B to the Gas Act 1986 (c.44)– (a) paragraph 10 (injury to gas fittings and interference with meters);  
(b) paragraph 11 (restoration of supply without consent).
- 25. An offence under the Crossbows Act 1987 (c.32).

We would suggest this proposed list needs to be reviewed and shortened. We would also suggest that the wording of Part 1 is too generalistic as regards its reference to “any offence inferring violence.” We would ask the Scottish Government how it would anticipate a licensing board or the police as assessing an “inference” of violence?

SBPA has also considered the terms of the draft proposed form of a board’s statement of reasons and whilst generally supportive of the contents of the draft and in particular the need for clarity would make the following specific comments.

Historically despite the requirement to issue reasons for some matters under section 18 of the Licensing (Scotland) Act 1976 there have been occasions when boards have failed to do so timeously and it is of considerable commercial importance to the trade and indeed .../

**.../ for all concerned to have clear and prompt reasons for any decision of a board within as short a timescale as is reasonably possible. We would suggest that regulations should prescribe a maximum of 3 weeks for these (section 51 of the 2005 Act).**

As regards the content and nature of the form.

These forms should be able to be prepared and sent electronically wherever reasonably possible.

There should be no requirement to use boxes, but the order of information provided should be consistent.

In all cases postcodes should be included where possible.

Given that a board's statement of reasons will clearly feature in any possible appeal by an applicant of licensees, we would suggest the following additions to the form, namely:

- At 3 - Name and address of the applicants' agent if any;
- At 5 - Name and address of parties present and where anyone is represented also include the name and address of the representative or agent;
- At 8 – A note of the number of board members present, a statement of the quorum for that board and a note of the voting e.g. unanimous, 4/3 or use of casting vote or whatever;
- At end - After "Name of Clerk," add "or person acting as the clerk at the hearing";
- At end - "Date reasons given and date posted/emailed";

We hope that our comments are of use and will be considered positively by the Scottish Government.

We would be grateful if you would confirm receipt of our response which we are happy for the details of our response, and for our contact information in responding to this consultation to be made public.

Yours sincerely,

Patrick Browne  
Chief Executive