



6 August 2007

Mr Gary Cox
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Scottish Executive
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Also submitted by e-mail to: LicensingConsultations@scotland.gsi.gov.uk

The Scotch Whisky Association (SWA) has followed closely the development of subordinate legislation implementing the Licensing (Scotland) Act 2005 and welcomes the current opportunity to comment on the draft Regulations setting out proposed 'relevant offences' under that Act.

One of the Association's key priorities is to ensure the highest level of legal protection for Scotch Whisky from unfair competition worldwide. During the consultations on the Licensing (Scotland) Act, the SWA therefore requested that the opportunity be taken to tackle the unfair practice of on-trade substitution of spirit drinks by designating a number of offences as relevant offences.

The re-filling of bottles of genuine branded spirit drinks with cheaper, inferior, and sometimes illicit product deceives the purchaser and may endanger consumer health. Government may also lose revenue, as it is possible excise duty may not have been paid on the substituted spirit, whilst company brand building efforts are undermined.

The Association therefore wishes to note and welcome the inclusion of the following offences as relevant offences under the draft Regulations.

- Trade Descriptions Act 1968 (s1)
- Food Safety Act 1990 (s14 and 15)
- Trade Marks Act 1994 (s92(1) and (2))

We believe inclusion of the above as relevant offences in the subordinate legislation will help to protect consumers in Scotland and will assist industry efforts to protect Scotch Whisky and other spirit drinks from unfair and deceptive practices.

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Inclusion of these offences as relevant offences under the Licensing (Scotland) Act 2005 will also ensure consistency across the UK as a whole, in line with the terms of the Licensing (England and Wales) Act 2003.

The Association believes that strict penalties are required to ensure those who commit such offences face appropriately severe consequences. We would therefore support the consultation's suggestion that the offences should be considered 'relevant' after a single conviction. This would have a strong deterrent effect.

In addition, and for the same reasons, the Association is supportive of the proposal that the offences of aiding, abetting, counselling, procuring and inciting any of the listed offences should also be considered relevant offences.

The Association would also again like to take the opportunity to stress, in general terms, that strict and effective enforcement of the licensing regulations has a vital role to play in promoting more responsible attitudes to alcohol in Scotland. The law needs to be applied firmly, both by those selling alcohol, and by the police and others enforcing its provisions.

In conclusion, the SWA welcomes the Regulations as drafted and looks forward to their early implementation from 1 February 2008. Should you require any further information on our position, please do not hesitate to contact me.

Yours sincerely

David Williamson
Public Affairs Manager

ANNEX A

RESPONDENT INFORMATION FORM: LICENSING (SCOTLAND) ACT 2005 - RELEVANT OFFENCES - CONSULTATION ON DRAFT REGULATIONS

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name: The Scotch Whisky Association

Postal Address: 20 Atholl Crescent, Edinburgh EH3 8HF

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) on behalf of a group/organisation x go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in Scottish Executive library and/or on the Scottish Executive website)?
- Yes (go to 2b below)
- No, not at all We will treat your response as confidential

- 2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (please tick one of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation *will be* made available to the public (in the Scottish Executive library and/or on the Scottish Executive website). Are you also content for your response to be made available?

- Yes
- No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Executive 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 the Scottish Executive to contact you again in the future in relation to this consultation response?

- Yes
- No