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The Licensing (Scotland) Bill: An Analysis of Consultation Responses

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**THE LICENSING (SCOTLAND) BILL:
AN ANALYSIS OF CONSULTATION RESPONSES**

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EXECUTIVE SUMMARY

The consultation

1. *The Licensing (Scotland) Bill: A Consultation on Liquor Licensing* ('the consultation document'), published in May 2004, sought views on 46 proposals for the reform of licensing in Scotland. One hundred and twenty-three written responses were received from a wide range of stakeholders.

2. This report summarises the submissions from: licensing boards (29); DAAT and substance misuse bodies (17); alcohol sales (16); members' clubs and student organisations (15); individuals (14); health and social work bodies (6); local authorities (6); alcohol producers (5); community/religious/youth organisations (4); other statutory bodies (3); and other groups (8). As such consultations aim to give voice to key stakeholders in the field, responses generally do not constitute a representative sample. There is a reasonable balance between boards and local authorities (35) on the one hand, and those involved in the production, supply and sale of alcohol (36 including clubs). Health, advice and social work-related bodies are, proportionately, less well represented (23).

3. Between two thirds and three quarters of all those responding to the consultation commented on each individual question. Many respondents included qualifying and conditional comments, referring, for instance, to the need of local flexibility or for clarification of terms used in the consultation document.

The national policy framework

4. Overall, there was a high level of support for the national policy framework, across respondent types who commented on the questions in this section. Specifically, there was support for standard national licence conditions and for the key areas identified for such conditions. Various other areas where conditions might be imposed were suggested, such as minimum standards for training and monitoring of health, safety and hygiene. Consultees were split on whether national conditions would remove the need for additional local ones. One of the most controversial proposals was that licensing board policy statements should remain current for two years, with a clear majority rejecting this, although few reasons were given, apart from one that policy should evolve constantly.

Licensing boards

5. A majority agreed to limiting board membership to ten, but there was concern about proposed minima for a sitting of five and for a quorum of three, which were both deemed too small. Suggestions to ensure close co-operation between licensing boards and licensing fora included having a small number of common members or having LLSOs liaise between them.

Licences

6. There was a high level of consensus on the proposal that standard national conditions should be developed for off-sales and the provision of adult entertainment, and either guidance or national conditions for late opening. Just under a half of those who commented supported retention of 11 pm as the 'late opening' watershed; a third proposed midnight, others later times. Various conditions that could be applied to 'late opening' were offered,

across a range of issues relating to matters that would be covered by national standard conditions, safety, venue capacity, cut-off entry times, location and customer dispersal arrangements.

7. The need for close co-operation between local planning and licensing systems was recognised, and there were suggestions that redefinition of planning classes would be required to reflect changes in license types.

8. There was general support for controls on occasional permissions for voluntary organisations. No suggested conditions dominated respondents' remarks, although the issue of training recurred. Definitions of 'voluntary organisation' and 'occasional' were sought.

9. Although most who commented on the question of whether boards should actively assess overprovision in their area agreed with the idea, definition of 'area' was called for and there were a number of observations about how to define and calculate overprovision.

Licensing hours

10. There was general agreement in principle for a presumption against 24-hour opening, but many thought that this should not be statutorily enshrined, and that particular venues and events should be excepted. The position of 24-hour shops and supermarkets was raised in relation to contemporary working, shopping patterns and the need for local flexibility.

Communities

11. Entitling 'anyone with a real and material interest' to object to a premises licence application was supported, but objectors and partial assenters felt that 'real and material interest' needed to be defined or was too broad. It was generally agreed that the groups in the consultation document should receive written notice of an application from the board, although positive and negative responses expressed concerns about the costs and administrative burdens this would entail for boards. Definition of 'immediate neighbour' as a group to be notified was required.

12. A clear majority of those who commented on the appropriateness of a 4 metre radius from the licensed premises, to determine who should receive written notice, rejected the notion that this distance would be anywhere near sufficient to encompass all who might be affected by the business. Local factors and the nature of the premises would influence the impact on neighbours. More appropriate distances were sought (for example, 100 or 25 metres).

Monitoring and compliance

13. A proposal that Liquor Licensing Standards Officers (LLSOs) should be employed by local authorities rather than by boards was supported by a majority who included this question, although there was concern about how this new post could be funded.

14. Few suggestions for how a tiered complaints system should work or for the range of sanctions which would be applied went beyond proposals in the consultation document. The importance of having a clear range of sanctions at different levels was stressed and the introduction of a points system (akin to the one for driving licences) suggested.

15. Two thirds of comments agreed that a licence suspension should take immediate effect until a hearing on suspension before a sheriff. Opposition was largely based on an assertion that this would be contrary to natural justice and deny the licensee the right to earn a living.

Training

16. Agreement, by a clear majority, that board members should undertake their mandatory training within three months of election before sitting was tempered by a general concern about what would happen in the period between the election of a new board and new members receiving training. Rejecters thought that three months was insufficient time. Most agreed that personal licence holders should undertake refresher courses every five years, although there were concerns about how training would be funded.

17. Three quarters of all the consultees answered the question on whether all permanent staff should receive appropriate mandatory training to national standards. Almost all assented that they should and all who disagreed were trade representatives. Responses on this issue linked to responses on whether casual staff should be exempted from the same training requirement, and instead receive on-site training from a licence holder, subject to a statutory definition of 'casual'. Despite apparent consent to this proposal, many expressions of agreement were qualified on condition of there being a clear definition and understanding of 'casual', particularly given the sector's heavy reliance on casual staff, workforce mobility, and the fact that casual staff may work longer hours than permanent ones. The third of comments rejecting this notion did so on the basis that all staff serving alcohol should be appropriately trained and a definition of casual based two or three months of employment would be inappropriate.

18. There was near unanimous consensus that the personal licence holder should have a duty to ensure that training of permanent staff was carried out. More than half of the suggestions for monitoring staff training mentioned a role for the LLSOs and it was noted that individualised staff records or logbooks of training would be especially useful given the nature of employment patterns in the sector.

Irresponsible promotion

19. A clear majority of consultees commenting agreed that the issue of irresponsible promotions would be best tackled through a Scotland-wide approach, accepting the need for national definitions, actions and publicity. Two thirds of all those responding to the consultation included comments on how to define 'irresponsible promotion', expressing a range of features and tactics encouraging rapid and excessive consumption. Definitional problems in the off-sales context were noted, as were examples of existing good practice.

Children and young people

20. A majority who commented agreed that premises should be required to 'opt in' to a new system allowing children access to licensed premises subject to standard national conditions and administrative procedures. Agreements were qualified with an emphasis on the need for any system to be accessible and simple and that separate premises types should be treated differently (restaurants contrasted with bars). Relevant conditions would have to

be monitored, and having tick-boxes on application forms and details in operating plans for how children's access was to be provided for would minimise the administrative burden on boards and licensees. There were various reasons behind rejections of an 'opt-in' system and there were concerns that conditions for children's admittance should not be so restrictive that certain types of otherwise suitable premises would be unable to enter the system.

21. There was virtually unanimous support amongst those who commented for extending a system of no sale without proof of age to all licensed premises in Scotland.

Registered clubs

22. The consultation sought suggestions for conditions to be attached to premises licence to recognise the special nature of clubs. A few consultees thought that the same conditions should apply to all premises. Most comments singled out one or two conditions, or simply stated that clubs should adhere to requirements in existing legislation on clubs. The inclusion of key information in the operating plan was presented as a way of ensuring that the club observed licensing conditions in line with its status as a non-commercial operation.

23. Most who commented agreed that the bar manager or steward should be the designated personal licence holder, but many shared with some who rejected this proposal anxieties about how this would operate given the often voluntary and irregular nature of staffing in clubs. It was suggested that an appropriate office bearer could assume the role.

24. The question of whether there were any 'very small clubs' that should be exempt from the proposed personal licence requirements was one of the most contentious consultation topics. Three quarters of those who commented believed there should be no exceptions, sharing with those who did think there could be exemptions concerns about defining 'very small clubs'.

Fees

25. Although there was general support for the idea of a retention fee, many were unclear about its purpose, and there were misgivings about the effect a fee might have on small retailers if it were set too high. An annual payment was the most common suggestion for how the retention fee could be paid, on the basis of some form of premises banding system.

Board procedures

26. Almost all who commented on the proposal agreed that premises applying for a licence should display an A3 notice for 21 days announcing this. Suggestions for how to make board hearings less intimidating for those appearing before them included observations that proposed smaller sized boards might help. Particular elements of the hearing that were identified for potential change were moderated use of legalistic and overly formal language, the provision of accessible information about the process, training for the chair and other members in running hearings, and the room layout.

Miscellaneous provisions

27. A vast majority who submitted comments thought that motorway service stations and petrol stations should not be able to sell alcohol, but that community shops, which also sell petrol, should be allowed to sell alcohol. Some definition of such business would be needed.

28. A clear majority believed that the police, with due justification, should have the power to seek a court order prohibiting the sale of alcohol on particular train routes at certain times. The question of whether there was a real problem to justify such a move was posed and the point made that the *consumption* of alcohol was more the issue.

29. Half of all consultees responded to a question on whether passenger boats and ships travelling within Scotland should be included in the licensing system. A majority considered that they should, although potential jurisdictional problems were flagged up. It was noted that, although regulation might be needed in the pleasure excursion market, this did not appear to be the case for the Scottish shipping sector.

30. The vast majority who commented agreed that wholesalers should be brought within the licensing system. The idea of requiring those who run mail order, internet or telephone sales operations to hold a personal licence was supported by almost all who commented, although a few consultees drew attention to the problem of enforcement. A majority further agreed with a suggestion that their storage premises should be licensed.

ONE: INTRODUCTION AND BACKGROUND

BACKGROUND

1.1 In June 2001, the Justice Minister (at that time, Jim Wallace) announced the appointment of the Nicholson Committee to undertake a comprehensive review of liquor licensing law in Scotland. Following extensive consultation with a broad range of organisations and individuals, *The Nicholson Committee: Review of Liquor Licensing Law in Scotland* ('the Nicholson Report')¹ was published in August 2003, containing 90 recommendations. The views of those who had been involved in the review were then sought in relation to the report and its specific recommendations. Analysis of the 161 written responses received was published in March the following year.² While the public consultation was running, the First Minister also announced the formation of the Working Group on Off-Sales in the Community, which reported, in February 2004, with 30 recommendations for reform.

1.2 In May 2004, the Scottish Executive established an Expert Reference Group to support the creation of a framework for the Licensing (Scotland) Bill and associated regulations. In the same month, it also launched another phase of written consultation to seek views on the document *The Licensing (Scotland) Bill: A Consultation on Liquor Licensing*. By the closing date at the end of August, 123 responses were received of which this report provides a summary analysis.³

THE CONSULTATION RESPONSES

1.3 One hundred and twenty-three submissions to the consultation were received by the closing date for comments. As with the 2001 and 2003 consultation, responses derived from a variety of bodies and individuals, and 48 came from consultees who had responded to the consultation on the Nicholson Report, which had itself included many of those who had been involved in the initial phase of the review. Respondents were placed in the following categories, with the number of responses from each type indicated in brackets.

- alcohol producers (5)
- community/religious/youth organisations (4)
- DAAT and substance misuse bodies (17)
- health and social work bodies (6)
- licensing boards (29)
- local authorities (6)
- members' clubs and student organisations (15)
- off-sales (10)

¹ www.scotland.gov.uk/library5/society/rlllm-00.asp

² Anna Dudleston and Lorraine Murray. 2004. *The Nicholson Committee Report on Liquor Licensing Law in Scotland: Analysis of Consultation Responses*. Edinburgh: Scottish Executive Social Research. www.scotland.gov.uk/library5/society/ncrar-00.asp

³ Information in relation to the review of licensing law, including, for example, papers from the Expert Group can be found on the Scottish Executive website at www.scotland.gov.uk/Topics/Justice/Civil.

- on-sales (6)
- other statutory bodies (3)
- individuals (14)
- ‘other’ (including a police organisation, a catering chain, legal/planning bodies and a training company) (8)

1.4 It is important to appreciate that consultations such as this one are largely designed to elicit the views of key stakeholders and interests in the field and do not pursue a representative sample. However, there is a reasonable balance between, on the one hand, licensing boards and local authorities (35 in combination) and those involved in the production, supply and direct sale of alcohol (36, including clubs). Health, advice and social work-related bodies are, proportionately, less well represented. This analysis reports on submissions from across the board of those who participated, however well represented that type of consultee was as a proportion of the total responses.

1.5 There were 51 questions (including sub-questions) in the consultation paper. Thirty-four of these provided responses amenable to numerical quantification, and each of these received between 90 and 61 responses, the average number of responses to any one question being 77, almost three quarters of all those participating in the exercise.

1.6 It is important to note that a number of responses, to certain questions, particularly from licensing boards and local authorities, but also from trade representatives and other types of consultee, had clearly been prepared and shared in advance, and may be identical or very close in wording. Nevertheless, as separate submissions, they are counted individually.

1.7 By the very nature of consultation exercises such as this one, the numbers who chose to comment on individual questions clearly varies. Any interpretation of the proportion of responses in agreement or disagreement must be undertaken with caution. Given the relatively small number of submissions, it would not generally be appropriate to present the results in percentage form.

1.8 The nature of submissions varied widely: some consultees might provide just one word responses to a question, whereas others submitted more extensive discussion and comments. It is also important to appreciate that the nature of the responses did not always make it easy to decide whether the consultee was in agreement or not with all or part of a proposal, and that analysis is a matter of interpretation. It can also be the case that the similar additional comments and qualifications to a response may even be offered by consultees who otherwise indicate an explicit and definite positive or negative stance towards the question, so interpretation is further complicated.

1.9 For the vast majority of questions where consultees could provide a yes or no type answer and where the responses could be easily be quantified, those who chose to comment were overwhelmingly in support of the recommendation: for most questions three quarters or more of the comments were positive. However, one needs need to look closely at the qualifications and conditions respondents have attached to their statements of support or rejection.

1.10 There was a small group of more problematic proposals: three were rejected by most who had elected to comment on them and one received just a bare majority. Question 19, concerning the use of a 4 metres to define those neighbours entitled to receive written notice

of an application was clearly the most contentious issue, with less than a quarter of those who commented on this agreeing that this distance would be sufficiently wide. The proposal in Question 5a that board policy statements should remain current for two years was rejected in three fifths of comments on a variety of grounds. A definition of casual staff based on a two or three month employment duration was deemed, by a majority, to be inappropriate. Less controversially, Question 4a about whether the formulation of national conditions should remove the need for additional local conditions, although not rejected by respondents, was supported in just over half of the comments on this matter.

AIMS AND STRUCTURE OF THIS REPORT

1.11 The general purpose of the work reported here was to analyse the responses for presentation in a published report to support the Scottish Executive in its development of proposals for the Bill. Where relevant, the analysis notes where certain groups responded to a question in a particular way and key points of agreement and digression, and topics that recur across consultees' submissions on a particular proposal.

1.12 The report is structured on the basis of the different sections of the consultation document, information being presented in relation to each proposal in turn. A brief summary is provided of how consultees reacted to each proposal and recurrent themes and responses from all groups are considered. A small number of the main topics which recurred in supplementary comments that were unrelated to a specific proposal are also summarised.

TWO: THE NATIONAL POLICY FRAMEWORK

1. Should we seek to ensure a measure of national consistency by balancing Board discretion with an emphasis on a set of standard national licence conditions supported by detailed statutory guidance?

2.1 Three quarters of respondents commented. In principle, there was strong support for this idea, across the range of consultee types. Few, however, broke the question down very far, focussing instead on national conditions without specific attention to the issue of statutory guidance. The vast majority of supporters qualified their responses with a plea for flexibility.

2.2 Those in partial agreement drew attention to the particular needs of rural communities, the difficulties that would inhere in attempting to devise a set of national conditions suitable for rural and urban locales, and that licensing boards should be able to add conditions they deemed necessary. It was also noted that any conditions should be free of jargon and as clear as possible. Several respondents thought that boards would require technical guidance (for instance, on assessing venue capacity).

2.3 Those who rejected the proposal (including three licensing boards and one local authority) largely did so with the expectation that the result would be boards which were 'caged in'. Reservations about this approach centred on the extent to which the conditions would encompass boards' activity and which areas would be left to their discretion.

2. Do you agree with the issues identified so far for those standard national conditions:

2a. no-proof no-sale

2.4 Again, almost three quarters of consultees commented, almost all being in favour. Support for having national conditions in this area is also clearly evident in responses to Question 33 which proposed the extension of ‘no-proof no-sale’ to all licensed premises. Many, however, qualified their agreement with references to related issues and conditions that they considered should be attached to the no-proof no-sale provision. The following were the most frequently mentioned: that a national proof of age identity card scheme should be introduced; that conditions should be national and must be tightly drafted; that if cards were not introduced there should be clear guidance on what forms of ID would be acceptable; and that staff and licence holders would need appropriate training. A few thought that no-proof no-sale could encourage licensees to encourage and be involved in campaigns to promote responsible consumption.

2.5 Two ‘maybes’ felt that there needed to be greater clarity about any scheme and that it would have to be supported with staff training and an easily accessible, national proof of age scheme. One commercial respondent, representing businesses where the sale of alcohol is subsidiary to their main business, rejected the proposal on the basis that it was unclear which kinds of premises would have to come under these provisions and what the effect could be on their sector.

2b. irresponsible promotions

It was agreed, across the board, that this should be tackled at a national level. Eighty-five consultees passed some comment on this.

2.6 Three licensing boards and a students’ organisation pointed out that the conditions should apply equally to off-sales, given the way habits have developed so that more drinking takes place in the home and prior to going out in an evening. Two dissenters represented the off-sales sector and did not see this as an issue for them. The generally positive reaction to this proposal is borne out also by recognition of the need to tackle this subject at a national level in response to Question 30.

2.7 Many comments highlighted the need for a definition of ‘irresponsible behaviour’, some noting how difficult this would be to achieve. One respondent made the important point that broader factors should be considered such as the use of loud music to make conversation difficult, encouraging faster drinking, and the effect of national advertising campaigns on people’s attraction to a product.

2c. access by children

2.8 Two thirds of all consultees provided a response, with almost all in assent. Two who were in partial agreement came from off-sales which believed that there should be a provision for easy opt-in by their sector. Dissenters did not provide reasons for disagreement except for one licensing board feeling that this should be a matter for local interpretation. This was echoed in comments by some of those in agreement with the proposed conditions who thought that there should have to be flexibility for local variation and a move away from the current restriction on children being unable to eat in premises after 8 pm, especially in areas with a reliance on tourism. Conditions relating to the suitability of the premises for children, in relation to eating, play and no-smoking areas were suggested.

2.9 Responses to Question 32, on the issue of establishing an opt-in system for children's access, are relevant to this as they also highlighted the need for flexibility in relation to the type of establishment and local conditions.

3. What other issues would be suitable for national standard conditions?

2.10 A wide variety of issues (some fairly vague) were suggested, from across the range of consultees, sometimes with recognition that the matter would or could be dealt with under separate legislation. Many touched on areas covered in other sections of the consultation document. The topics that recurred most frequently were:

- minimum national standards for training of licence holders and serving staff;
- noise levels, especially late at night;
- public disorder;
- minimum standards for the training of stewards and a possible registration scheme;
- minimum standards for and monitoring of health and safety, hygiene and food safety;
- and guidance on how to deal with illegal drugs, including rules on entry, seizure and disposal.

2.11 Less common suggestions were:

- minimum requirements for stewarding;
- prohibition on 24-hour opening and requirements that premises be closed for a set period each day;
- maximum premises capacities to be set, to be monitored and enforced by LLSOs;
- consistent smoking policies;
- the extent to which premises may be altered before the operating plan must be changed or a new licence required;
- minimum standards for the supervision of premises;
- betting and gambling on licensed premises;
- litter and waste management standards;
- CCTV for clubs over a certain capacity;
- secure cloakroom facilities in clubs.

2.12 Others topics occurred just once or twice in responses, for example, separate conditions for registered clubs, including ones to curtail abuse of registered club status and the requirement for all premises to provide reasonably priced soft and low alcohol drinks.

4a. Do you think that on some of these issues the formulation of national conditions should remove the need for additional local conditions?

2.13 Just over one half of consultees commented on this issue and just over half of these agreed with the question. Having national standard conditions for certain things was accepted and would remove the need for local formulation of conditions but the importance of flexibility and freedom to set local conditions in respect of other topics was underlined. No one group of respondent types dominated either the positive or negative camp on this and very few who were supportive of the proposal provided any substantive additional comment. Licensing boards themselves were split, as were on-sales, although representatives of the latter who commented on this agreed that national conditions should remove the need for additional local ones.

2.14 Both the sizeable proportion of respondents who disagreed and partial supporters emphasised the importance of local knowledge and local needs, while accepting the need for there to be certain national conditions (including health and safety, ‘no-proof no-sale’, or irresponsible promotions).

4b. If so, on what issues would this apply?

2.15 It should be noted that although people may have expressed a particular stance on question 4a, their additional comments sometimes suggest that opinions were not so easily separable or definable. For instance, some who supported the proposal then identified particular issues where there should be national conditions and might mention the need for some local flexibility; while some who rejected the idea, then identified areas where they thought national conditions should apply.

2.16 Almost one fifth of those responding to this question mentioned no-proof no-sale as being an area where national conditions should prevail, and about one seventh mentioned irresponsible promotions.

5a. In the interests of best use of Board resources and offering certainty on policy for the licensed trade and local communities, should Board Policy Statements remain current for 2 years?

2.17 Opinion on this question, which was commented on by around eighty respondents, was divided across the range of consultee types. Three fifths disagreed with the proposal. Licensing boards were almost evenly split on this, representing approximately one third of the supporters and the same proportion of dissenters. Few of the clear majority who disagreed with this proposal provided reasons for their stance. The main one was that policy should be constantly evolving, so there would need to be flexibility for statements to be reviewed in reaction to local change and new legislation.

2.18 Supporters agreed that two years would be a reasonable period to assess a policy in operation and whether it should be reviewed.

5b. If not, what period would you propose?

2.19 Many consultees suggested alternative periods for review. Eighteen favoured three years. Most did not give a specific reason apart from that this would better allow boards to assess whether stated policy was working as intended, and a couple made the point that this would bring practice into line with England and Wales.

2.20 Twelve proposed that board policy statements should be reviewed every four years to last the duration of the life of a board. Five years was also thought by some to be preferable and it was pointed out that this would bring the system into line with policy review in planning. A small proportion thought that there should be no period stipulated or that review should be as frequent as annually.

THREE: LICENSING BOARDS

6. Do you agree that Board membership should be limited to a maximum of 10?

3.1 Just under two thirds of respondents addressed this, with three quarters of the comments supportive of a maximum of ten. There appeared to be concern amongst those who agreed with the question about the minimum of five for a sitting and, across respondent types and across positive and negative answers, about the quorum figure of three, which were both deemed to be too small. All who provided an opinion on why they opposed the proposal felt that ten members was too low a number.

3.2 Anticipated effects of having a board of no more than ten members included that a small board with a low quorum could be dominated by forceful individuals; a number of smaller 'sub-boards' would be effectively created in an area, for different sittings, and certain ones might develop a reputation for being 'soft', so applications would be timed to come before them; and that it might not reflect properly the diversity of interests in the area. No alternative figures dominated the suggestions, although fifteen and twenty members were suggested recurrently.

7. What is the best way to ensure close co-operation and an effective relationship between the Licensing Board and the Licensing Forum without compromising the independent nature of either body?

3.3 Seventy consultees provided some comment on this question, although these were sometimes brief and most presented obvious pointers, such as good communication and regular meeting between the two bodies, mutual and clear understanding of the roles of each body, a small number of common members or a single common member, the same chair or vice-chair, and the LLSO to act as a conduit between the two. It was suggested that board members and the clerk should be entitled to attend forum meetings. The remits of each body would have to be clearly delineated and their relationship possibly the subject of primary or

secondary legislation or a memo of understanding between COSLA and the Scottish Executive.

3.4 Several respondents stressed the importance of the board not being made answerable to the forum. Although the views of the forum should be important, they should not be decisive, nor should a board have to give reasons for observing advice from the forum or not, and the forum should not have the right to make observations or objections to an application.

FOUR: LICENCES

8. Should we seek to maintain high standards in the industry by developing standard national conditions for off-sales and the provision of adult entertainment and either national conditions or guidance for late opening premises?

4.1 A high level of support for this proposal – nine tenths of those who commented - was also reflected indirectly in the varied, numerous suggestions offered in response to Question 10.

4.2 Most who partially agreed with the question singled out late opening as the exception, believing that this should be left to the discretion of boards, based on local circumstances. Those who objected to these proposals felt that experienced boards should have the expertise to handle these matters. Even some of those who agreed pointed out that acceptable standards for ‘late opening’ would vary by area. However, respondents did not break down the question about late opening to expand upon whether they had a view on whether national conditions or just guidance would be more appropriate.

9. At what point should premises be considered to be ‘late opening’?

4.3 Seventy-five respondents made some comment on this issue, including almost all the licensing boards and local authorities. Just under one half appeared to support the retention of the current definition of ‘late opening’ as after 11 pm, with some suggesting a limit of midnight could be applied for Fridays and/or Saturdays. A third recommended that midnight should be the limit. However, several suggested later limits.

4.4 Many respondents, especially boards and councils, were of the opinion that variation should be allowed to reflect local circumstances - that later limits would be acceptable for city centre locations, for example. A couple thought that guidance should be provided to boards on a national level to help them define ‘late opening’ appropriate to their area. Most comments related only to on-sales in any explicit way, but some did point to the need for hours to differ for off-sales.

4.5 A couple thought that the question was confusing given that the Nicholson Report had recommended that the concept of permitted hours be removed with the new licensing arrangements and replaced with provisions in the operating plan.

10. We would welcome your views on the types of conditions that might be imposed.

4.6 Recurrent suggestions included:

- a cut-off entry time
- age restrictions
- reduce noise after 11 pm or take necessary noise reduction measures
- to uphold licensing principles
- observe rules on sale of alcohol to people who are inebriated
- on irresponsible promotions
- CCTV coverage of public areas
- non-glass containers
- consideration of door-stewarding (for relevant venue types)
- consultation with independent security advisers to ensure arrangements sufficient
- consideration of capacity
- material promoting safe drinking and discouraging drug misuse to be prominently displayed
- procedures in place for the prevention, detection and handling of drug misuse
- fire safety conditions as appropriate
- off-sales should separate alcohol from displays of soft drinks and sweets, and screen alcohol off when not on sale
- all staff should be appropriately trained
- full relevant risk assessment should be undertaken (including first aid, capacity, fire, CCTV, security)
- assisting dispersal of customers from the premises, especially at closing time
- stewarding of taxi queues or other transport methods as relevant
- no deep discounting

4.7 Three leisure industry representatives provided the same response with specific ideas for their own sector, related to venue definition and safety:

- DJ on every evening
- dance floor to be at least 20% of operating area
- extensive foreground sound system and lighting effects
- fixed capacity
- CCTV
- sufficient levels of trained stewards
- manager with late night venue experience
- drinks should be ancillary to entertainment in advertising or promoting the venue

4.8 In relation to adult entertainment venues, the following were proposed:

- restricted physical contact between clientele and performers
- minimum admission charge
- minimum age for entry
- appropriate building standards (including no private areas, of areas where customers and performers are alone)
- CCTV

- prohibition of paid sexual services, on or off the premises

4.9 It was pointed out that conditions should be intrinsic to the operating plan and suggested some should be voluntary rather than mandatory.

Premises Licences

11. We would welcome your views on whether there should be closer co-operation between the planning and licensing regimes at local level.

4.10 There were sixty separate comments on this matter. Half clearly expressed support for closer co-operation; one sixth was of the opinion that there should be a firm separation to avoid any compromise of the independence of either system; just three argued for the status quo.

4.11 With almost a third, however, it was unclear whether they agreed that there should be *closer* co-operation or whether they were simply voicing approval of the idea of close co-operation and a certain degree of joint working. Some thought that the major overhaul of licence types would mean closer co-operation was not essential, but that there was a specific need for redefinition of planning use classes to take account of changes in liquor law. It was noted that close co-operation was essential also with the fire authorities, building control, environmental health and police.

4.12 Councils were of the opinion that it would need to be clear who imposed operating conditions on premises and that this should be the licensing board. One board recommended that there could at least be a specific statutory provision clearly defining which body would have the final say over late opening hours. The role of planning in addressing issues of over-provision was highlighted. A number of responses made it clear that they thought that change would be needed to facilitate greater harmony between the two systems, referring, in the main, to deficiencies in the planning system. Existing problems in the interface between the two systems were noted.

Occasional Permissions

12. Do you agree that we should seek to impose some controls on occasional permissions for voluntary organisations?

4.13 More than half of all respondents submitted comments on this, with nine tenths of these in favour of the proposal. A few themes recurred strongly in the comments supplied by supporters of the proposal, although no individual ideas were expressed by anything approaching a majority: 'voluntary organisation' would need definition, but not in a way that would prohibit ad hoc and fund-raising groups from applying for a licence; 'occasional' would have to be defined; a fifth thought that at least one person, often an office bearer, should have undergone mandatory, perhaps nationally certified, training; and of fourteen who referred to the current limit of four applications per annum, ten felt this should be retained, others thought this needed to be reframed. It was also suggested that one office bearer should be a licence holder and that a simplified version of the personal and premises licences could

be adapted for use by voluntary organisations. It was pointed out that any regulations should not be unduly onerous.

4.14 Opposition was based on the following points: there was no perceived problem in current practice; if the limit of four applications a year were retained this would minimise potential for abuse; and training requirements on applicants would be impractical.

13. What would be the best way to do that?

4.15 About half of all consultation respondents answered this question and many comments on Question 12 suggested ways to impose such controls and were reiterated in Question 13 submissions. The vast majority of comments underlined the importance of training, whether to a national certified standard or not, and extending from just the applicant to all serving staff. Limiting the number of occasional licences a body could apply for in a year was also a popular option. Other suggestions were less widespread: making it necessary to clear events with the Chief Constable or a nominated police officer; refusing licences where standards had not been satisfactory in the past; and demanding that a personal licence holder should be the applicant – at least for events over a certain size.

Overprovision

14. Do you agree that Licensing Boards should be required to actively assess overprovision within their area with the results reflected in their policy statement?

4.16 Just under two thirds of all consultation submissions included a response to this question. A small majority (three fifths) who agreed with the idea provided relatively few comments which expanded upon the topic. The point was made in a number of submissions that provision would have to be assessed in collaboration with the police, health agencies and trade to collate data, and consideration would need to include people coming into an area to use premises, and services such as transport, the police and A and E facilities.

4.17 Six who agreed partially qualified their support thus: ‘their area’ would need to be defined, especially for rural areas and island communities (where provision could be dense in pockets, non-existent in other places); the concept of overprovision is ‘elusive’; concerns about how to translate the idea into practice; and concerns that the special nature of student clubs should be taken into account (providing a range of specific services, including welfare ones) to a specific population, so they would not be hit if applying in an area where there was already a high level of other venue type provision. A fair and consistent approach would be needed with clear guidance from the National Licensing Forum.

4.18 Diverse consultees rejected this proposal, including eight boards and four councils, as well as nine representatives of alcohol sales and the entertainment industry. Themes that recurred included in the varied reasons given for dissent included: a single policy would be unworkable across different types of locale across the country; boards *should* be aware of provision in their area, so they should not need to make a definitive statement about provision and should assess each application on its merits; operating plans should state the premises’ maximum capacity which should provide a guide; and that the new single type of licence for a wide diversity of facilities would make it very hard to compare like with like.

4.19 Several thought that the concept of overprovision should be dispensed with altogether: its application could prevent new entrants to the market (including retailers who could help the maintenance or regeneration of the locality), causing stagnation and a lack of competition (and no or little incentive to improve existing facilities); boards can abuse the concept when they do not like an application for whatever reason; and decisions made on overprovision ground have been virtually impossible to appeal and explanations of refusals are almost impossible to understand. Other opponents noted that this would have to be considered by the National Licensing Forum and could be part of the remit of LLSOs.

FIVE: LICENSING HOURS

15. Do you agree that there should be a presumption against 24-hour opening in Scotland with limited exceptions set out in statutory guidance?

5.1 Eight-five submissions mentioned this question, with three fifths in agreement. Some of those agreeing with this proposal included conditions and qualifications in their comments. Despite general agreement, in principle, that there should not be round the clock opening, it was thought that the presumption should not be enshrined in statute. Round the clock facilities like ferry and air terminals were deemed appropriate exceptions and it was thought that 'limited exceptions' would be difficult to define.

5.2 A significant, varied minority (nearly half of which consisted of half of all the respondent boards) opposed the proposal. The vast majority believed that this should be left to the discretion of the board based upon local knowledge and not statutory guidance. Off-sales and trade representatives made the point that many people are now working irregular times, so they often do grocery and other shopping outside of the current permitted hours.

5.3 One health organisation noted that it would not oppose 24-hour opening on health grounds as people are individually responsible for their drinking, but advised that if it became prevalent there should be a programme of research into the impact of 24-hour opening on health, acute and long term. One consultee suggested that there should be restrictions so that premises could only be open a certain number of hours in the day to ensure proper maintenance.

16. What limited exceptions should be allowed?

5.4 Recurrent suggestions for exceptions were New Year, festivals, national events and sporting events of international importance; 24-hour shops and supermarkets; and airports and other transport terminals. Many comments echoed those provided in expansion of answers to Question 15.

SIX: COMMUNITIES

Objections and Representations

17. Should we widen the range of people who are in a position to object legitimately to a premises licence application by allowing anyone with a real and material interest to forward objections or representations for consideration by the Licensing Board?

6.1 Widening the range of legitimate objectors was supported in more than two thirds of comments. Most who rejected the proposal did so on the basis that ‘real and material interest’ would be difficult, even impossible, to define, but it could not always be ascertained whether they disagreed with the broadening of the range of legitimate objectors, per se, or because of the inclusion of that phrase. A small number who partially agreed noted that ‘real and material interest’ was too wide.

6.2 It should be noted that many in support or partial support of the idea, thought that the use of ‘real and material interest’ echoed the Civic Government (Scotland) Act 1982. Conversely, one of those who agreed in part and three who rejected the proposal all suggested that the notion of ‘neighbourhood’ in the same Act would be preferable to ‘real and material interest’, clearly not considering that the two terms denote the same concept.

18. Should immediate neighbours, community councils, the Chief Constable, fire authority and relevant departments of the local authority be entitled to receive written notice of an application from the Licensing Board?

6.3 Almost three quarters of those who commented on this explicitly concurred with the proposal. Of the sixteen clear rejecters of this idea, seven were boards and two were councils, while the others came from a range of consultee types. It is important to note that many of the supplementary comments from supporters were materially making the same or similar points as those made in comments from those who disagreed or agreed only partially – the raw figures are, therefore, somewhat misleading, the comments more interesting.

6.4 There were a few primary concerns that recurred:

- the administrative and cost burden this would impose on boards;
- how ‘immediate neighbour’ could be practicably defined and, therefore, whom should be contacted (for example, would it be the owner or tenant);
- community councils (seen as not always truly representative of a community) should not necessarily have a statutory right to be notified;
- and by which means would these groups have to be informed.

There were few specific comments about the inclusion of the police, fire services and local authority, other than to confirm that this was accepted.

6.5 Proposals to scrap press adverts were regretted in many additional comments as these were thought to be an effective way to publicise an application while the display of an A3 poster on the premises was thought sufficient notification to adjacent neighbours. A couple of consultees regarded notification of neighbours as a task for the applicant. One suggestion of how to minimise the burden on boards and clerks was to create a web-accessible register of

applications that could be checked by fire services, the police, local authorities and community councils.

19. Is a radius of 4 metres sufficient to define those neighbours entitled to receive written notice or should this be wider?

6.6 Two thirds of all consultees commented on this. Three quarters of those who provided a response did not consider that 4 metres would be sufficient to encompass all (including those in adjacent properties) who could potentially be affected by noise and other environmental impacts of licensed premises. Opponents included most licensing boards, all but one of the alcohol/drug action teams who responded and a range of other respondent types. Almost half of those who agreed with the limit were trade representatives. No one category dominated those who accepted or rejected the proposal.

6.7 Local factors such as street layout, pedestrian travel routes, transport, expected noise, and the rural or urban character of the area were cited as needing consideration. About one tenth of those who commented thought 100m more appropriate and a few suggested 25m. A ninety metre radius was suggested by one on the basis that this would be consistent with planning applications. It was pointed out that the radius could be varied by premises type- more people would be affected by a new 'super pub' than a new corner shop off-sales. A couple of respondents raised the practical question of the physical point on the premises from which the radius for notification would be measured.

SEVEN: MONITORING AND COMPLIANCE

20. Do you agree that Liquor Licensing Standards Officers should be employed by local authorities rather than by Licensing Boards?

7.1 More than three quarters of 81 responses to this question were positive. Supporters agreed that LLSOs should not be employed by boards on the grounds of integrity and impartiality, the question being posed of how an LLSO could give evidence to a body of which they were an employee.

7.2 Amongst those who both agreed and disagreed with the idea, and across the spectrum of consultee types, there were concerns about how the posts would be funded. One consultee raised concerns about the exact role of the LLSOs in terms of the hours and patterns of work they would have and whether they would have legal powers to call on police back-up.

21. Do you have further views on how a tiered complaints system should work and what the range of sanctions should be?

7.3 Fifty-nine respondents commented. Although many merely conveyed agreement with the proposals in the White Paper, around twenty offered a view on how the system could be operated.

7.4 The need for there to be a clear range of sanctions was highlighted and suggested 'first level' sanctions included verbal reprimand, warning letter, orders for retraining and the

provision of guidance. A few suggested the introduction of a points system similar to the one for driving offences: different sanctions would attract points depending on their severity, and the accumulation of a particular number of points would prompt more serious action. A couple suggested following the sanctions set out in the Licensing Act 2003 for England and Wales.

22. In view of the rigorous nature of monitoring under the new system and the tiered approach to complaints and sanctions, do you agree that licence suspension should take immediate effect until a hearing on interim suspension before a Sheriff?

7.5 Seventy-nine consultees included this question, with more than two thirds assenting to the proposal. More than half of those who agreed with the question represented boards and local authorities, while the remainder extended across bodies representing health, fire safety, police, DAATs, and religious and other community interests. Several pointed out that suspension was only likely to be resorted to after a series of other sanctions had been attempted without success.

7.6 Just under half of those who rejected this proposal represented the alcohol trade or entertainment sector; the rest were distributed across consultee categories. Reasons for disagreeing that a board should have the power to order immediate suspension before a sheriff hearing were that this was contrary to natural justice in that the board would be acting as judge and jury and denying the licensee the right to earn a living. There was concern about the effect immediate suspension would have on a business (especially small ventures) in the longer term - even if the sheriff were to reject the board's case against the licensee.

7.7 It was suggested that alternatively the police could be allowed to apply to a local sheriff for immediate closure in really serious cases.

7.8 Across response types, the need to speed up the system for hearings was noted, so that sheriff hearings would have to happen within, for instance, one or two weeks of the suspension.

EIGHT: TRAINING

23. Do you agree that Board members should be obliged to undertake their mandatory training within 3 months of elections before sitting?

8.1 Amongst the eighty-two who commented, agreement by a broad and clear majority for this proposal in principle was tempered by a concern expressed in most comments about what would happen in the intervening period between the election of a new board and the new members receiving the requisite training. Setting a minimum standard for the interim period (for instance, the chairperson and a certain proportion of members should have been trained) or retaining some previous members were suggested solutions. One idea was that the election of board members could be staggered or only some would be elected councillors, with a minority of representatives from key groups providing a professional component to the board.

8.2 Those rejecting the proposal felt that three months was insufficient, six being the main suggested alternative. One suggestion was that board members could be permitted to sit on a maximum of two meetings before receiving training. The question of who would pay for training was also raised by one, as was the possibility that such training requirement might deter people from applying to join boards.

24. Do you agree that personal licence holders should be obliged to undertake refresher training every 5 years?

8.3 More than three quarters of the 81 who addressed this question in their submissions were in agreement and generally offered no further comment, deeming the period to be appropriate, although a few voiced concerns about how this training would be funded. Those who rejected the proposal did so from a variety of viewpoints: training should be undertaken every three years as at present; every five years was too often and would be too costly; and refresher courses should only be required if the conduct of the licensee deemed it necessary.

25. Do you agree that all permanent members of staff who are serving alcohol should receive appropriate mandatory training to an agreed national standard?

8.4 Yet again, around three quarters of all consultation respondents addressed the specific proposal, the vast majority being supportive. All of the six opposing the proposal were from the private sector, three being off-sales representatives. Those who agreed in part stressed the importance of the training being available at a local level or in-house. The AFS Servewise course was identified by four trade representatives and one individual as the potential basis for a national standard.

26. Do you agree that casual staff should be exempted from this requirement but should receive basic on site training by a personal licence holder subject to a statutory definition of ‘casual’?

8.5 This proposal sparked ambiguous and hard to define responses, and although a majority expressed some level of agreement with the question at its most basic level it appears to be an issue demanding closer consideration as they argued for conditions which could be seen to qualify their assent. Most importantly, across all types of the 85 responses to this question, it was evident that there would need to be clear description of the ‘casual worker’. It was pointed out that a casual staff member might work eight hour shifts, while a permanent member could be working half that a day. Several licensing boards felt that LLSOs could monitor casual staffing levels and performance and there should be checks that staff were receiving training to national standards.

8.6 The high level of casual employment in the on-sales trade was again pointed out by several consultees. Comments also referred to wider issues of staff supervision and the proportion of different categories of staff on a shift at one time.

8.7 Almost one third of consultees responding to this question explicitly disagreed with the proposal, on the following grounds: *all staff* serving alcohol should receive an appropriate level of training; and a two or three month definition would be unworkable because it would

be open to abuse and many people work in the sector for years on the basis of casual contracts. One licensing board had already been informed by traders in their locale that they would resort to hiring staff on a casual basis to avoid training obligations if these applied to permanent staff only.

27a. How should 'casual' be defined?

8.8 There was no single dominant view on this. Some indicated that the question was irrelevant if there was to be no distinction between casual and permanent serving staff in matters such as training requirements and a number stated that periods of employment shorter than three months could be used as a measure, echoing the duration suggested in the consultation document (Question 27b). However, a definition founded on the numbers of hours worked (for instance, less than sixteen for casual staff) or a distinction between staff working regular hours and those called upon for shifts on an ad hoc basis might be more appropriate. Attention was also drawn to the mobility of staff on possibly casual contracts over potentially long periods of time and the way that casual labour could be spread throughout the year depending on the season.

27b. Would a period of 2 or 3 months be appropriate?

8.9 Just over half of all consultees provided a specific response to this, a small majority of whom disagreed, many referring back to answers given to Questions 27a and 26. Many of those who supported such a definition did, however, note that they expected that it would be difficult to monitor. Again, reference was made to the mobility of staff, the potential for employers to find a way round this definition, and that a definition based more on hours worked per week would be more helpful. If the definition were to be based on duration, two or three months was pointed out as being too short for many businesses over the summer period when the tourist season often lasts for four months.

8.10 There was no noticeable pattern in the way in which different categories of consultees responded to this question.

28. Should the designated personal licence holder be placed under a duty to ensure that training of permanent staff is carried out?

8.11 There was almost unanimous support for this proposal from 79 who responded to it and few comments added anything to the simple indications of assent. One who opposed the proposal believed that all personal licence holders, not just the designated personal licence holder, should be responsible for this.

29. How can this best be monitored?

8.12 More than half of all the comments received on this noted that the LLSOs would have a role in checking that the appropriate training had been carried out, although there were different suggestions about this could be achieved. For example, the most frequently cited idea was to allow LLSOs access to personnel data and training records or log books; others

suggestions were that they could carry out spot checks or written tests of staff. It was suggested that each staff member should have a personal record of training which would be especially useful given the temporary and mobile patterns of employment in the sector.

NINE: IRRESPONSIBLE PROMOTIONS

30. Do you agree that the issue of irresponsible promotions is best tackled at a national level?

9.1 More than nine tenths of the 85 who commented agreed fully or in part with this proposal, tending to accept that national definitions, action and publicity would all be required for a Scotland-wide approach.

9.2 However, the need for localised consideration of the problem and a degree of flexibility were highlighted, so that boards could assess borderline cases in light of local knowledge and tackle novel ways of circumventing any national conditions by unscrupulous promoters. One consultee recommended a commitment to monitor change as a result of actions to tackle the problem, using local and national health and other relevant data. Another suggested that, as in the USA, alcohol producers should be obligated to contribute funds towards the promotion of responsible drinking.

9.3 One alcohol advisory and research body thought that off-sales promotion did not present the same, acute problems as that in on-sales – people would stock-up on promoted goods for consumption over a period of time, rather than binge.

31. Do you have any views on how an ‘irresponsible promotion’ can best be defined?

9.4 Eighty-three consultees expressed some comment on this, although some were extremely brief, with any promotion encouraging binge drinking, pricing below the national average, or discounts in concentrated periods like ‘happy hours’, discount evenings and pricing activity with a cut-off time, with various examples of how such promotions are run, all recurring. Difficulties that would inhere in defining ‘irresponsible promotion’ were highlighted and the difference between off-sales and on-sales acknowledged in this context, although the fact that off-sales could offer even cheaper alcohol and that bingeing could occur in the home was also noted, countering the view of off-sales promotion as being possibly less ‘dangerous’ which occurred in a response to the previous question.

9.5 A couple of consultees observed that legislation would not deal with the problem of how irresponsible promotion contributes to excessive consumption which would have to be tackled through education also. The involvement of consultants to monitor advertising was also suggested.

9.6 A few respondents warned that not all promotions should be treated the same; an exception might be responsible ‘all-inclusive’ deals or a pub quiz prize of a bottle of whisky. One considered that there should be a standard condition in all premises licences in relation to advertising that could encourage excessive consumption.

9.7 It was noted by trade respondents that there is already some good practice that could be drawn on to help with this issue. Some consultees supported an idea of minimum national pricing, citing the success achieved in Perth and Kinross. It was also pointed out that some types of drink pricing can vary vastly depending on their quality and that care should be taken that one kind of drink should not be discriminated against in comparison to other categories with which it could be in market competition.

9.8 Problems with any system for pricing were foreseen and it was noted that the Home Office was consulting the Office of Fair Trading on the legality of imposing minimum price tariffs.

TEN: CHILDREN AND YOUNG PEOPLE

32. Do you agree that with a view to ensuring the protection of children, licensed premises should be required to 'opt-in' to the new system subject to a set of standard national conditions and a simple administrative procedure?

10.1 There were eighty-seven submissions relating to this proposal, three quarters of which were positive. A small number who agreed in part (across six categories of consultee types) qualified their response on the basis that any system should be easily accessible and simple; children should perhaps be allowed where food was the main trading purpose; while bars would need to opt-in to admitting children; hotels and restaurants could be afforded more flexibility.

10.2 Many supporters qualified their approval similarly, and suggested that conditions which would need to be observed and monitored for opt-in could include the provision of food or other services and entertainment, and time or event-based limitations on children's entrance that should be clearly and prominently displayed. One suggestion was to have a tick-box on application forms and that detailing in the operating plan how conditions for children's admittance would be met would avoid any separate, additional burden on boards and licensees. It was suggested that research should be undertaken to monitor the effects of any changes. Several consultees noted that many licensed premises would be unsuitable environments for children given the behaviours and language to which they would be exposed.

10.3 Four respondents (who submitted the same comments on this) thought that those who chose not to opt-in should be required to give reasons for this in their operating plans, a situation which seems to be neither opt-in nor opt-out, but rather demands that the admission and provision for children should be dealt with in all applications or operating plans, with opting-out the aimed-for exception to the norm.

10.4 Although a number rejected the proposal, their reasons had diverse emphases. Most referred in some way to what they thought would be a lost opportunity to foster a more radically different approach to licensing in Scotland: licensed premises *should be* or *should aspire to be* of a standard fit for children, so there should be a presumption that they could be admitted, as Nicholson had recommended, in the hope that this would support higher standards; the majority should be suitable, therefore, opt-out more logical. It was also thought that if provision for children were to be integrated into the operating plan there should be no need for any regulation.

10.5 There were major concerns about the types of conditions that could be imposed on licences which opted-in to admit children. If these were overly demanding (for example, requiring children's menus, toilets or play areas), it would be impossible or unfeasible for some premises to opt-in, especially the very kinds of venues, such as hotels and restaurants, in rural and other tourism-dependent areas, where family trade was essential. There were anxieties that draconian or 'heavy' conditions would have serious implications for the Scottish tourist trade and would do nothing to promote family-friendly venues and practices, for Scots and visitors, or contribute to changing the Scottish drinking culture.

33. Do you support a no-proof no-sale approach for Scotland, extended to all licensed premises?

10.6 There was unanimous support from the eighty-three who referred to this proposal. A few respondents suggested that a policy of checking those who appeared to be under 21 would strengthen the initiative.

10.7 Two consultees submitted comments where it was unclear whether they supported this approach in principle or not.

ELEVEN: REGISTERED CLUBS

34. What conditions should be attached to the premises licence to recognise the special character of clubs?

11.1 Sixty-three responses were submitted, a small number simply expressing a view that the same conditions should apply to any licensed premises, regardless of its character, and a few (offering no substantive response) noted that they would like to be able to comment on any national conditions before they were adopted.

11.2 Most of the responses singled out a particular condition which they thought important - customers should be registered members and bona fide guests only, police should have right of entry, they should adhere to their constitution, minimum level of staff training. More generally, a majority recommended that a condition should be that clubs should continue to adhere to the requirements placed on registered clubs in the Licensing (Scotland) Act 1976. One suggestion was also that they should have to make a statement that they were not commercial premises and were not competing with commercial operators.

11.3 It was proposed that the operating plan should minimally specify: the name of the club; the address of the premises in respect of which the premises licence is sought; a plan of the premises; the club secretary, and an address for notification if other than the premises; the date the club was first established; and the full name, and date and place of birth of each office-bearer of the club. The operating plan should also explain how the club will uphold the licensing principles, and would include sections relating, specifically, to management, employees, children and young persons, operating hours, and its constitution.

11.4 Three consultees also recommended that clubs should not be included in calculations for overprovision because they do not sell to the public.

35. Do you agree that the bar manager or steward should be the designated personal licence holder?

11.5 The majority (three fifths of 65 responses) who agreed had no significant additional comments, apart from sharing qualifications of their support founded on the fact that in some premises or clubs the bar steward would not be as appropriate for the role of designated personal licence holder as would be the overall manager or person with general responsibility for day-to-day running of the establishment. Clubs, especially in rural areas, often do not have bar managers but are staffed by committee members, in which case one of them would have to assume the role.

11.6 Some of the comments by those who rejected the idea echoed comments by supporters about the nature of clubs and staffing, recommending that office bearers, such as the club president or secretary, should assume the role.

36. Are there any very small clubs which should be exempt from the personal licence requirements?

11.7 Those who thought that no very small clubs should be exempt – almost three quarters of the 69 who included it in their submission, including six representatives of sectors where small clubs are common - largely did so on the grounds that, no matter the size or turnover, there should be no exceptions, that it would be extremely difficult to classify what was ‘a very small club’ and that it might be abused. One suggestion was that the size of the club could be taken into account by the use of a sliding scale of retention fees based on annual turnover.

11.8 Arguments for exempting such clubs also cited the issue of definition. A few consultees thought that clubs should be encouraged to apply for occasional licences where they did not have a premises one. Thresholds for definition of ‘very small club’ based on member numbers or turnover were proposed as personal licence requirements were thought to be potentially too onerous on certain establishments.

TWELVE: FEES

37. Do you agree that a retention fee for premises licences should be charged?

12.1 Submissions strongly conveyed that some were unclear as to the function of the retention fee and how it would be charged, several considering that this was an issue for the Expert Reference Group to decide. There were sixty-six responses, three quarters of which were supportive.

12.2 Those who disagreed were mainly concerned that small outlets would be hardest affected and might even give up their licence (for example, small shops in rural areas). Retention fees were perceived as another tax on the sector, while other licensing systems, such as for planning, taxis and late hours catering, did not carry any similar retention charges on top of other fees.

38. How can this best be done?

12.3 More than half of the 60 who provided some comment on this considered that an annual fee would be most appropriate. A banding system based on the nature and size of the business was suggested by a couple, calculated by, for example, a combination of elements like annual turnover, postcode, type of premises, risk evaluation, capacity and floor space. Collection methods were not considered, apart from a suggestion that annual invoices could be issued by the clerk or fees could be paid by direct debit.

THIRTEEN: BOARD PROCEDURES

39. Do you agree that every premises applying for a licence should display a pro-forma A3 notice for 21 days?

13.1 Sixty-nine consultees commented on this. A range of respondent types clearly agreed, although a number of them also thought that there should still be the requirement to advertise in the local press, that the placement of the notice to ensure people could read it would be important, and that this notice should give some description of the nature of the operation. Three of the dissenters and two of those agreeing in principle with the proposal were concerned with the practical matter that most office printers only produce A4 outputs.

40. How can we make Board hearings less intimidating?

13.2 Sixty-one comments were provided on this topic, many from boards that were already taking steps to make the experience of hearing less intimidating for those appearing before them. It was observed that the new system of smaller board numbers and a reduced number of meetings that licences would have to attend might also help. It was recognised, across the range of consultees, that, as a serious, legal process, a board hearings had to balance appropriate solemnity with the need for some level of informality.

13.3 The main areas where it was thought there should be change were:

- the use of everyday language rather than legalese and formally addressing members as ‘your honour’;
- the provision of clear, accessible published guidance for those appearing, explaining the roles of those involved in meetings and how they operate;
- the responsibility of the chair (who might need to be trained) to establish a tone for the hearing and to control its progress;
- training for board members on how to conduct meetings;
- there should be an adhered-to running order;
- and the meeting should be seated and where possible in a smaller venue, in a boardroom style layout.

13.4 Less frequently offered suggestions, which nevertheless, may have some merit are: lawyers should not be gowned; discussion should be open and audible to all concerned; decisions should be taken openly and given immediately after each case; the time the applicant spent waiting while others’ cases were being heard should be reduced; names

should be clearly placed in front of members and officials; and water or other refreshments should be available.

FOURTEEN: MISCELLANEOUS MATTERS

41. We would like to hear further views on the merits of preventing petrol stations from selling alcohol and whether we can limit such sales to those premises which provide an important community function as the local shop.

14.1 Seventy-nine consultees, across the board, including all the licensing boards who participated, provided some comment on this question. It was not always simple to determine whether the consultee had a definite view on this issue, but the vast majority of comments conveyed an opinion that premises selling petrol should be allowed to sell alcohol if their primary function was as a community shop, but petrol stations or motorway service stations should not. This was particularly relevant for rural areas. Others observed that there is no connection between drink-driving and petrol station purchases and that to refuse licences to shops selling petrol would be illogical given that alcohol can be purchased by drivers at other outlets.

14.2 A number of consultees mentioned the need to base a definition of suitable and unsuitable outlets on the proportion of the business that was based on the sale of petrol.

42. Should the police be provided with power to seek a court order banning the sale of alcohol for certain train lines at certain times where they are a persistent source of nuisance and disorder?

14.3 An overwhelming majority of the sixty-one responses were in agreement. One council that agreed in part thought that strict tests would have to be met before any order could be granted to the police. A police organisation and DAAT, which were in partial agreement, felt that, rather than prohibit sales on certain train lines through the use of a court order, legislation should be introduced to allow the imposition of such prohibitions in a similar manner to police powers to stop and search people and vehicles.

14.4 A consultee in agreement with the proposal recommended that a ban on *consumption* would be more appropriate; banning the sale of alcohol would be pointless as passengers could take their own alcohol or already be inebriated when they boarded. Several comments suggested that alcohol consumption on trains was no longer the problem it had been once.

43. Should passenger ships and boats be included in the licensing system where journeys are between points in Scotland?

14.5 Only fifty per cent of all those who took part in the consultation addressed this question, a majority of these being in favour of inclusion, although many called for greater clarity of terms and noted potential jurisdictional difficulties in enforcing licensing for vessels that could move between different board areas. Several commented that the sale of alcohol anywhere should be brought under the system and staff appropriately trained.

14.6 One respondent rejected the proposal on several grounds. Passenger ferries and similar vessels, as distinct from those involved in pleasure excursions (like booze cruises and mobile parties), were thought to be the wrong target and they were unaware of there being a problem in the Scottish shipping sector and believed that, like trains, these services should be outside the scope of the legislation. It was noted that not only could sea journeys traverse multiple licensing board areas, but that routes could suddenly alter because of weather or technical problems. It was pointed out that provisions in existing maritime legislation already covered the safety of passengers and crew, and that there could be conflicts of authority between police officers, LLSOs, maritime bodies and the ship's master.

44. Do you agree that wholesalers should be brought within the licensing system?

14.7 A range of consultees who disagreed (about one tenth of the 72 responses which included this proposal) did not perceive there to be a need for a change in the legislation. The few additional comments from those in agreement pointed out that high standards of responsible retailing should consistently applied throughout the supply chain, wholesalers had become more accessible to the buying public than they once were, contributing to the problems of bootlegging and smuggling; and they could not currently be included in board calculations of over-provision. A couple of respondents suggested that wholesalers should be required to check that those to whom they are selling should have a licence to sell alcohol.

45. Should those who run mail order, telephone and Internet alcohol sales businesses be required to hold a personal licence?

14.8 The vast majority of 71 consultees who commented on this agreed with the proposal. It was suggested that someone within the business should hold a personal licence and be appropriately trained. The probable difficulty of enforcing such was raised by a few consultees. One dissenter thought that a personal licence would be inappropriate given there is no direct interface with the customer, and that, as in England and Wales, the place from which the alcohol was delivered should have a premises licence instead.

46. Should their storage premises be required to have a premises licence?

14.9 There were few extended comments on this from the 65 who included it in their consultation submissions. Three quarters agreed, welcoming regulation in this area. More than a third of those who dissented were licensing boards, and the others were trade representatives and three alcohol/drug action teams, who saw no need for this. It was noted that many suppliers would have their storage outside of Scotland and that other storage-only premises (such as supermarket warehouses) are not currently licensed.

FIFTEEN: ADDITIONAL COMMENTS

15.1 A number of respondents provided their views on a variety of issues that were not the specific topic of any question in the consultation paper, or they were subsidiary matters and extensive expansion of points related to topics that had been raised.

- Several consultees were concerned that some of the proposals for the White Paper diverged in emphasis from those in the Nicholson Report, which they believed offered preferable options, such as the proposal in the earlier paper to extend ‘drinking-up’ time.
- Many of those representing clubs used the consultation as an opportunity to air their general concerns about the status of clubs and changes that could potentially result from the review of licensing legislation (for example, many clubs would be unable to afford to hire door stewards should they be made a requirement).
- One statutory body flagged-up impending fire safety reform that would make the regulations referred to in the Nicholson Report obsolete.
- Sports grounds representatives argued for changes to their current status, using arguments such as that allowing them to be licensed might even alleviate alcohol-related public disturbance and other problems around grounds. They claimed that other relevant facilities, security and health and safety at modern grounds made them suitable premises.

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