

The Licensing (Scotland) Bill

A Consultation on Liquor Licensing



© Crown copyright 2004

ISBN 0 7559 4198 5

Published by
Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B35262 5-04

Further copies are available from
The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
Tel 0870 606 55 66

The text pages of this document are produced from 100% elemental chlorine-free,
environmentally-preferred material and are 100% recyclable.

Contents

Introduction	Cathy Jamieson MSP, Minister for Justice	1
Chapter 1	The Licensing Principles	4
Chapter 2	The National Policy Framework	5
Chapter 3	Licensing Boards	8
Chapter 4	Licences	12
Chapter 5	Licensing Hours	18
Chapter 6	Communities	20
Chapter 7	Monitoring and Compliance	25
Chapter 8	Training	29
Chapter 9	Irresponsible Promotions	31
Chapter 10	Children and Young People	33
Chapter 11	Registered Clubs	35
Chapter 12	Fees	37
Chapter 13	Board Procedures	39
Chapter 14	Appeals	41
Chapter 15	Miscellaneous Matters	42
Summary of Questions		47
Consultation Arrangements		50
Annex A	Issues for Consideration by Expert Reference Group	51





Introduction by Cathy Jamieson, MSP Minister for Justice

In June 2001, the Nicholson Committee was established by the Scottish Executive to undertake an independent review of Scotland's liquor licensing law. The Committee reported in August 2003. In addition, views on off-licences were expressed during the consultation on the Executive's Strategy for Tackling Antisocial Behaviour 'Putting our Communities First'. A group chaired by Peter Daniels, Chief Executive of Renfrewshire Council, reported on 'Off-sales in the Community' in February 2004.

In addition to the extensive consultation carried out by the Nicholson Committee, the Executive has received over 160 responses to consultation on the Committee's report. I am very pleased with the level of response and the thoughtfulness of the comments. I am now in a position to respond to this detailed and extensive work.

This paper sets out our views on the key recommendations.

The Executive takes the problem of the harm caused by alcohol abuse very seriously. A recent survey has shown, for example, that 23% of 13 year olds and 46% of 15 year olds reported drinking in the week before the survey.

We are taking action in a number of ways to address these problems, including educating our young people and working to change our drinking culture. In January 2002, we published the Plan for Action on Alcohol Problems, to provide a framework for national and local action in the areas of culture change, prevention and education, the provision of services and protection and control.

A national communications strategy to target binge drinkers, additional funding for local alcohol action teams to build capacity for local delivery of the Plan, publication of an alcohol problems support and treatment services framework and development of 3-year local alcohol action plans are now in place. In March 2004, we announced specific additional resources of £8 million in the next 2 financial years to support the implementation of these plans.

There is no quick fix. However, liquor licensing legislation is one of the routes we have available to us that can support the other measures we are taking through the Plan for Action on Alcohol Problems.

Scotland needs modern laws for a modern society, laws that reflect our needs as individuals, communities, business people and consumers. Those needs have undoubtedly changed considerably over the last 30 years. I believe that the proposals set out here will meet those needs and in addition will:

- support our wider agenda of cracking down on binge drinking and under age drinking and the consequent antisocial behaviour and crime it can cause;
- support responsible retailers and licensees; and
- offer flexibility and discretion for local Boards to solve local problems balanced with an overarching national framework.

We took the view that the proposals made by the Nicholson Committee should be considered together as the fundamental basis of the new system. We are therefore in agreement with many of the key proposals including the licensing principles, the single premises licence, the new personal licence and the continuation of the system of Licensing Boards.

However, we have also listened to concerns raised through the consultation process and in discussion with the licensed trade. Our proposals reflect this.

We believe that the clear benefits of local flexibility must be balanced by a prominent national framework which sets boundaries around some of that local discretion in the interests of national consistency and on those issues where we feel that a national approach would be beneficial.

We also believe that for some issues it will be appropriate to develop a set of minimum standard national licence conditions. We advocate this approach not only for issues such as the access of children to licensed premises, but also as a means of applying conditions to the provision of adult entertainment, to recognise the additional public safety requirements which should be adhered to by late opening premises, and to recognise the specific differences relating to off-licences.

Licensed premises have a place in our society. Pubs and clubs provide entertainment and a focus for an enjoyable social life. Off-licences, particularly corner shops, provide an important role and service for local communities. In addition, licensed premises very often provide a service to visitors to Scotland.

It is in all of our interests to ensure that standards are high. For that reason, it is our intention that training for all servers of alcohol in licensed premises should be mandatory.

We must also ensure that the balance is right between the provision of services by licensed premises and a proliferation of such premises leading to a detrimental impact on quality of life and, in some cases, unacceptable, antisocial and sometimes criminal behaviour.

The Licensing (Scotland) Bill

A Consultation on Liquor Licensing

This balance will vary according to location and depending on the needs of local residents. We have already set out our views on overprovision in relation to off-licences in response to the Daniels Report. We propose to extend this approach to all licensed premises. This means that Boards will be required to make a pro-active assessment of overprovision in consultation with local communities.

This is not a veto. Rather, it is a common-sense way to tackle an issue which many communities throughout Scotland have highlighted as a major concern.

We believe firmly that communities should have the scope to make their views known in an effective way and that this should be open to a wider range of people than at present. For that reason we have accepted the recommendations of the Daniels Committee on the widening of the entitlement to object and make representations to include anybody who can show a 'real and material interest'.

We support the Nicholson approach to licensing hours. The paper sets out our approach in full but we believe that there should be a presumption against 24 hour opening in Scotland for on and off-sales.

We have already proposed an alternative approach to safeguard children by requiring premises to opt-in to the access of children to licensed premises. In addition, to combat the serious problem of under age drinking, we intend to require all licensees to operate on a 'no-proof no-sale' basis.

Getting it right now in legislation with a simpler, more modern licensing system with rigorous controls in place where we need them will be of benefit to all of us - to communities, to consumers, and to the licensed trade.

We recognise the need to involve local communities and seek community views in the decision making process. In addition, in order to help us to create an effective framework for that process, we need to continue to involve those with specialist expertise - the police, licensed trade, health experts and Licensing Boards. We will therefore establish an Expert Reference Group to help us work on some of the detail for legislation. Annex A sets out the range of issues the group will be asked to tackle.

I would like to thank the members of the Nicholson and Daniels Committees for their commitment and hard work. I would also like to thank all those who have taken part in the review and offered us their views.

I look forward to reading your responses to the Executive's proposals and to working with you as we develop new legislation for Scotland.



**Cathy Jamieson MSP,
Minister for Justice**

Chapter 1

The Licensing Principles

The Nicholson Report

The Nicholson Committee proposes that the new licensing system should be based on a set of guiding principles which would underpin all of the decisions taken by Licensing Boards and would be set out in legislation. Those principles would essentially provide a clear philosophy for the new system.

The Committee recommends that the following core 'licensing principles' should be set out in the Bill:

- (a) the prevention of crime or disorder;
- (b) the promotion of public safety;
- (c) the prevention of public nuisance;
- (d) the promotion of public health; and
- (e) the protection of children from harm.

Consultation Summary

There was a significant response to the adoption of guiding principles with broad support from respondents of all types.

Our Approach

We agree with the importance of a guiding philosophy for the new system which is stated in the legislation. This will represent the values on which the Scottish licensing system is based, the parameters against which we should measure all the elements of that system and the solid foundation which Boards must have reference to in carrying out their functions.

The links between the misuse of alcohol and antisocial behaviour are all too clear. It was a link that became very apparent during our consultation on the Antisocial Behaviour, etc (Scotland) Bill last summer. The Bill is before Parliament now and contains some measures that will help combat alcohol fuelled antisocial behaviour but it is a problem that must be addressed in our wider policies. Changes to the licensing system therefore need to reflect the behaviour we are seeking to address through other measures - the Antisocial Behaviour Bill and the Plan for Action on Alcohol Problems. We want a system that assists in preventing crime, disorder and public nuisance but also supports the positive aims of promoting public health and safety and protecting children. These principles are about improving the environment for social drinking to one which is safe and welcoming for all.

We will therefore include the core licensing principles recommended by the Nicholson Committee in the forthcoming legislation.

Chapter 2

The National Policy Framework

The Nicholson Report

The Nicholson Report sets out the basis for a policy framework. The proposals cover the following:

- Licensing Boards should be under a duty to issue policy statements giving a broad indication of the policy likely to be adopted in the operation of the licensing system in their area.
- Boards would be required to consult the local forum on policy in general and to have regard to its view.
- In addition, Scottish Ministers should be empowered to issue and revise statutory guidance to Boards on the discharge of their functions.
- A new National Licensing Forum should be established to keep licensing law and practice under review and help to formulate guidance for Boards.

Consultation Summary

There was almost universal agreement to set up a new National Licensing Forum and to allow Ministers to issue statutory guidance. Of 29 responses on Board policy statements, a majority were in agreement.

Our Approach

Local flexibility to deal with local circumstances is a vital component of the Nicholson proposals and we agree with this approach. However, we are also aware of some concerns from the licensed trade who would like to see an element of national consistency. We consider that there is a place for both local and national policy within the new system. **We believe that the wide local discretion given to Licensing Boards under these proposals must be balanced with a clear, effective and mandatory national framework within which Boards will be required to operate.** We intend to build on the Nicholson approach to this framework, whilst giving greater weight and prominence to some measures to ensure appropriate national consistency, certain agreed national standards and to support the licensing principles.

We think that National and Local Forums are an important part of this approach and support those proposals. The National Forum should develop links with the Scottish Advisory Committee on Alcohol Misuse (SACAM) and at least one member of SACAM should sit on the National Forum.

We also believe that we will require a set of standard national premises licence conditions covering key issues. Those conditions would be worked up by the Expert Reference Group and, since they are an important part of the new system, would be set out in the Bill. Some of those conditions may remove the need for further local conditions. We would intend to draw up comprehensive statutory guidance for Boards covering a range of detailed issues, including the use of the national standard conditions.

In addition, at the local policy level, we would intend to set out certain mandatory requirements for Board Policy statements. We envisage a single consolidated policy statement to be reviewed every 2 years with power for Boards to revise in the interim (or to issue supplementary policy guidance) but only for new or unanticipated issues. The minimum content of the statement would also be mandatory.

The local and national frameworks would work together as follows:

National and Local Policy Framework

National Licensing Forum – offering expert guidance to Ministers as outlined by Nicholson and operating at a high level rather than developing relationships with individual boards.



Statutory Ministerial Guidance – on a range of topics drawing on both National Forum advice and declared policy. To include advice on general topics, eg operating the licensing principles, opening hours, powers of licence refusal including overprovision assessments and also on the correct use of certain mandatory national licence conditions.



Standard National Licence Conditions – a set of largely mandatory conditions covering key issues, which should reduce and in some cases remove the need for additional local licence conditions. To be worked up by the Expert Group and set out in the Bill. The Nicholson Report suggests some issues and we will add to this:

- **no-proof no-sale**
- **irresponsible promotions**
- **access by children**

We believe that some differentiation in the market might also be achieved through extending the use of standard national conditions – Chapter 4 sets this out in full. This could apply to:

- **off-sales**
- **adult entertainment**
- **late opening premises**

Regulations

would set out **mandatory** content of Board Policy Statements – to include policy on overprovision and hours. The policy they contain would be guaranteed for a set period of time, apart from any new issues. We suggest 2 years.



Local Policy Framework



Local Licensing Forum

covering the range of interested parties and allowing active participation in local decision making. They would feed in the grass roots perspective – the Board must have regard to their views.



Board Policy Statement

The Board would draw on the three elements above – national policy framework, content as set out in regulations and local knowledge.

Your Views

We would welcome your views on the following:

- 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?
- Do you agree with the issues identified so far for those standard national conditions (off-sales, adult entertainment and late opening premises are covered in Chapter 4):
 - no-proof no-sale
 - irresponsible promotions
 - access by children
- What other issues would be suitable for standard national conditions?
- Do you think that on some of these issues the formulation of national conditions should remove the need for additional local conditions? If so, on what issues would this apply?
- 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? If not, what period would you propose?

Chapter 3

Licensing Boards

The Nicholson Report

Boards

The Nicholson Committee recommends the retention of the present system of Licensing Boards, believing that there is considerable merit in the argument that councillors are well suited to being members of Boards because of both their local knowledge and their democratic accountability.

The Committee makes recommendations on Board composition, training, meetings, use of clerks and relations with the wider community.

The Committee sees a case for reducing the size of the Board, particularly for public hearings to determine applications, recommending that only five members should sit at any one time. They also question the need for the Board's Chair to be re-elected every year. There would be no need for statutory quarterly meetings and these would be replaced with ad-hoc meetings and regulations prescribing the time scales within which business must be completed. There should also be provision to delegate certain business to the clerk. It is already an offence for any applicant for a licence to attempt to improperly influence a member of a Licensing Board to support their application (also known as canvassing). The Committee feels that this should also be the case for objectors.

The Committee raises concerns that the current practice of Boards granting liquor licences to local authorities in their own name may be incompatible with the requirements of article 6 of the ECHR. Since members of the Board are also councillors, this may not be compatible with the requirement for an independent and impartial tribunal. The Committee therefore recommends that it should not be lawful for a local authority to hold a premises licence in its own name.

Local Licensing Fora

The Nicholson Committee also sees advantage in the Licensing Board being better informed about the concerns of the wider community and feel this can be achieved by the formation of Local Licensing Fora. Licensing Boards would have a statutory duty to meet, consult with and have regard to the Forum's views on their policy.

Consultation Summary

Whilst the consultation responses showed the majority were in favour of the continuation of Licensing Boards made up of local authority members, there were some requests for a wider representation of other interested parties on Boards or an alternative National Licensing Body.

Views were divided (with a slight majority in favour) on the setting of a maximum number for Licensing Board members. However, a greater number of respondents were against limiting to five the number who should sit to determine applications. Responses focused on the need for flexibility, avoiding internal conflict and ensuring a range of views were represented. While the majority of respondents were happy to forgo electing a Chair every year, a number wished the annual election to continue.

Most respondents agreed with the proposals regarding the removal of fixed quarterly meetings and the delegation of certain tasks to clerks. Some respondents stressed the need for flexibility.

On objectors attempting to exert undue influence, the majority of respondents were Licensing Boards and felt that this needed further consideration. It would be difficult to ban constituents from talking to their own councillors and in any case this might be unnecessary in light of the Councillors' Code of Conduct in which councillors would have to declare an interest and stand down from the relevant Board meeting.

22 of 33 responses rejected the conclusion on local authorities holding licences in their own name. The majority of councils who responded and COSLA disagree. There were concerns about cost and the implications for small businesses.

Local Licensing Fora attracted a high degree of support. However, more clarity was requested on membership, the specific relationship with the Board and how such fora were to be financed.

Our Approach

Boards

We still agree with the original findings of the Clayson Committee, which reviewed liquor licensing in 1972 leading to the current legislation. That Committee recommended a move away from licensing courts. Licensing, local in nature and a process carried out in the interests of the community, requires a body answerable to the electorate for the exercise of its functions. **We therefore agree with the Nicholson Committee's conclusion on the continued use of Licensing Boards drawn from local councillors.** The UK Government, in their recent Licensing Act, have opted for a regime similar to this Scottish model.

On the size of Licensing Boards, we believe there is merit in Nicholson's recommendations for a more manageable size of Board. Many who contributed to the debate have stated that appearances in front of large Boards can be intimidating. We do however acknowledge the need, raised in the consultation responses, for local flexibility to ensure an adequate geographical spread and political balance. There is also a clear need to ensure consistency of decisions taken by a Board.

We believe that an appropriate workable compromise would be to retain a system of allowing the whole Board to sit at any one time but to impose a statutory maximum of no more than 10 members in total, a minimum of 5 and a quorum of 3. Boards and Divisions may, within those figures, decide how many members they wish to appoint. The Chair would, as in the 1976 Act, be given a second or casting vote to use when a vote is evenly split.

On election of the Chair, we support the Nicholson approach of requiring the Chair to hold office until the next Council election (unless that person is no longer a Council member).

Within the context of the new proposed framework, the operation of statutory quarterly meetings seems unfairly restrictive. However, we also agree with consultation respondents that while there is a need for flexibility in the system, there is also a need for certainty. **We therefore support the removal of statutory quarterly meetings but intend to set out in regulations the timescales in which business should be completed and arrangements for delegation to clerks.** It would be up to individual Boards to decide when to hold the necessary meetings.

It seems suitable on the one hand that those who attempt to improperly influence the decisions of a Board member, whether as applicant or objector, should face the same penalties. However, we also recognise that steps have already been taken to ensure that councillors are aware of how to conduct themselves in circumstances where a conflict of interest arises and where they are involved in making decisions on individual applications. **The Ethical Standards in Public Life etc. (Scotland) Act 2000** introduced the new ethical standards framework, which included provision for the Councillors' Code of Conduct that came into effect on 1 May 2003. The Code was established to ensure that the highest standards are maintained in public life. The Standards Commission is responsible for enforcing the Code and has issued statutory Guidance on its use. **We consider that the Code and associated Guidance provide a sufficient alternative to the extension of this offence to objectors.**

In respect of Nicholson's recommendation that local authorities should no longer be able to hold liquor licenses, we have been made aware through the consultation process of the depth of feeling local authorities have on this subject.

Following our own consideration of the ECHR issues involved, we are of the opinion that local authorities may continue to hold liquor licences in their own name and may also continue to make objections to licences. We believe this is important so that local authorities are not limited from providing services to enhance their communities.

Local Licensing Fora

We place great importance on the role Local Licensing Fora will play in enhancing their local Board's awareness of both the beneficial and detrimental impact of their policies on the local community and on local trade. We believe it is crucial that there should be an effective mechanism for members of local communities to make both formal and informal views known within the new system.

We therefore intend to put Local Licensing Fora on a statutory footing.

Detailed arrangements for Forum working require to be developed further. However, we have the following initial views:

- membership should include a representative range of people with an interest in licensing but we appreciate that in some areas the full range of suggested members may not be available;
- community council representation may be appropriate;
- links should be established with the local Alcohol Action Team, which is responsible for developing local alcohol action plans to reduce alcohol related harm, and a member of that Team should sit on the Forum;
- an attempt should be made to involve young people, eg through youth fora;
- Liquor Licensing Standards Officers should actively participate;
- the Forum should be independent from the Board but the Board Chair or members should regularly attend meetings to ensure close co-operation exists between the two bodies;
- there should be a minimum of one formal annual meeting with the full Board; and
- the Forum should be governed and appointed by local authorities.

It is clearly the intention of the Nicholson Committee that the role of the Forum is to comment on the Board's policy and the impact of that policy and not to comment on individual licence applications. We support this approach. The Board should consult the Forum on its draft policy statement and on other policy decisions it is considering. We also agree that that it should be a statutory requirement for the Board to 'have regard to' the Forum's views and to be able to present reasons in those circumstances where a different route has been followed.

Appearances Before a Licensing Board

We propose, in line with the Daniels Committee Report, that guidance should be drawn up by the National Licensing Forum on how to make the process of appearing before a Licensing Board less intimidating.

Your Views

We would welcome your views on the following:

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

Chapter 4

Licences

The Nicholson Report

The Nicholson Committee believes that the present system of seven types of licence is confusing and unhelpful. They therefore recommend its replacement with a system of two licences – a premises licence and a personal licence. This is similar to the approach taken in England and Wales under the Licensing Act 2003.

Premises Licence

The premises licence would be a single form of licence for any premises which sells alcohol, each licence being tailored to the type of premises in question by reference to an operating plan lodged by the applicant. Operating plans would cover a range of detailed issues including the activity to be conducted, opening hours and policy in relation to children. They would also specify the designated personal licence holder responsible for the premises. They would form the basis for the terms and conditions of the licence. Once granted there would be no need for renewal, in contrast to the present system where renewal takes place every 3 years. However, there would have to be a facility to allow licences to be varied, for transfers and for provisional licences.

The Nicholson Committee sees the need for a set of standard national conditions applicable to all premises licences. The Committee also recommends that the Licensing Board should be able to modify or add to a premises operating plan regardless of whether or not a complaint has been lodged.

Fire and Safety

The Nicholson Committee proposes that there should be a requirement for all applications for a premises licence to be accompanied by a certificate from the fire authority and for the Licensing Board to be able to request, in addition, specification of a safe maximum capacity. The Committee also recommends the continuation of the requirement (with the extension to off-sales premises) for applications for provisional or new licences to be accompanied by certificates from the relevant planning, building control and food hygiene authorities. However, Boards should be able to attach additional conditions where this is necessary or desirable to promote the licensing principles.

Personal Licence

A personal licence would be granted to a named individual over the age of 18 who possesses appropriate, approved qualifications and who has not been convicted of any relevant offence or forfeited a licence in the past 5 years. The licence would authorise the holder to manage and to operate licensed premises without supervision and it would authorise that person to supervise others. The licence would be valid for 10 years before requiring renewal. The Committee believes that there should also be a central register of personal licence holders.

Occasional Licences and Occasional Permissions

The Nicholson Committee supports the retention of the current system of occasional licenses (for the licensee to offer catering outwith licensed premises) and occasional permissions (to an otherwise non-licensed voluntary organisation for special events). The Committee recommends that an occasional licence should in future be granted to a personal licence holder with the appropriate qualifications. Whilst a personal licence would not be required for occasional permissions, the Committee felt there was a need to define 'voluntary organisation'.

Grounds for Refusal of a Premises Licence

The Nicholson Committee recommends that, even in the absence of objections, a Licensing Board should be obliged to consider an application for a premises licence on its merits, and, if it concludes that the licence should not be granted, it should be able to take that course. The Committee recommends statutory grounds for refusal based on the following:

- undermining the promotion of the licensing principles;
- suitability of the premises with regard to location, character, condition and likely clientele; and
- overprovision.

Where a licence is refused, the Committee recommends that the present 2-year period before reapplication should be reduced to 1 year and an earlier reapplication should be allowed at any time if circumstances have changed.

Consultation Summary

Premises Licence

There was broad agreement that the current licensing system needs to be simplified, although several contributors believed that there should continue to be some differentiation between different types of establishments. Those who wished to maintain such distinctions, in particular certain sections of the Licensed Trade, believe that their removal would encourage a growth in irresponsible promotions through increased competition between different sector operators.

The main alternatives to the single premises licence revolved around using two or more of the three following type classifications:

- on-sale - to cover pubs, hotels, cafes and refreshment places;
- off-sale - to cover off-licences, supermarkets and other retail stores; and
- entertainment - to cover discos, nightclubs, dance halls and other clubs.

The majority supported the overall principle of the operating plan, however, several opposed the recommendation believing it to be overly bureaucratic and burdensome.

While two-thirds of respondents were in favour of removing the need to renew the premises licence, there was notable concern at the inability to review the licence regularly. On licence variations, there was a need to clarify the process.

The majority agreed to standard national conditions although one Licensing Board wished to be able to add conditions to any national standards to reflect local circumstances. A significant minority opposed allowing Boards to modify or add to a premises operating plan, believing it gave them too much power.

Fire and Safety

Whilst the majority supported the proposed fire certificate and safe maximum capacity specification, Fire Boards were concerned at how this sat with current fire prevention policy and the fact that maximum safe occupancy levels are at present the responsibility of local authority building control sections. On the continuation of new licences being accompanied by the relevant certificates and a Board's ability to attach additional conditions, most respondents were in general agreement.

Personal Licence

Personal licences were broadly supported although further clarification was sought on the holder's specific role and responsibility.

In qualifying for a personal licence, several respondents felt that it would be more appropriate to keep the 'fit and proper person' criteria from the present legislation and some (including the police) felt that this should be extended to premises licences.

It was suggested that applications should be made in the area an applicant is working in as opposed to the area of residence. There was general support for a central register.

Occasional Licences and Occasional Permissions

Only 4 respondents opposed the recommendation regarding occasional permissions, mainly on the basis that the voluntary organisations would be untrained and a belief that occasional permissions were abused, leading to unfair competition for other licensed premises.

Grounds for Refusal of a Premises Licence

In the main, respondents supported giving Boards overall discretion on whether to grant a licence. The majority agreed that the licensing principles should form the general ground for refusals although concerns were raised that this would give an unreasonable amount of power to the Board. If over provision was to be retained as a ground for refusal, more explicit guidance was requested together with a need to consider the relationship between planning and licensing.

Our Approach

We support the Nicholson Committee's proposals for a new personal licence and for a single new premises licence with an operating plan, which goes to the heart of the new system. We support the proposed duration for those licences. In addition, we intend, unlike the present system, to restrict licences to those aged over 18.

Premises Licence

We envisage a new licensing system that will ensure that Boards have the discretion to take action which is appropriate for local circumstances. However, we believe, as set out in Chapter 2, that it is also important that this discretion is operated within the context of a clear and effective national framework.

The Licensing (Scotland) Bill

A Consultation on Liquor Licensing

We are aware that the licensed trade has been critical of the lack of consistency within the existing system. We feel that the National Framework, the basis of which was proposed by the Nicholson Committee, will bring with it an appropriate level of consistency. **Boards will only be entitled to operate their discretion within the boundaries of that framework.** Standard National Licence Conditions will be an important feature of that system, limiting Board discretion on issues best controlled at national level.

In addition, we have listened to concerns that the single premises licence (and removal of permitted hours) will lead to a greater level of irresponsible promotions caused by greatly increased competition. Although it is not our role to legislate to prevent competition, we are concerned that standards in the trade should be maintained at a reasonably high level and should not be undermined by an increase in competition under the new system. We do not believe that we need to move away from the single premises licence approach to achieve this.

We consider that a degree of differentiation and thus the maintenance of certain minimum standards could be achieved by extending the role of standard national licence conditions. We will ask the Expert Group to consider the best approach but have the following in mind:

- standard national conditions appropriate for off-sales;
- standard national conditions appropriate for the provision of adult entertainment (including lap dancing); and
- options for late opening premises – the development of either standard national conditions or statutory guidance.

On licence variations, transfers and the provisional grant of licences, we accept the need for a workable system with straightforward administrative procedures. The Expert Group will be asked to develop a suitable process. We do not expect all variations to require consultation or publication. We will consider further the appropriate relationship between the provisional and confirmed premises licence to ensure that business development is not stifled.

We support the Nicholson Committee's wish to see new applications, including off-sales, accompanied by the relevant, planning, building control and food hygiene certificates and, where advised by the relevant authorities, support the Board's ability to attach additional conditions for the promotion of the licensing principles. **We will consider further the issues raised by consultation respondents on fire certificates.**

The consultation has highlighted that there may be an argument for some form of closer co-operation between the licensing and planning regimes. We intend to consider this further and would be grateful for views on how well the present system operates.

Personal Licence

For personal licences, we support a move away from the moral judgement of who is a 'fit and proper person'. However, it will be important to retain an effective system that enables Boards to ascertain, whether or not someone is a suitable person to hold a licence. We support the Nicholson Committee's approach which emphasises qualifications and relevant criminal convictions. Qualifications will be national and we will consider their compatibility with England and Wales. We will propose a list of 'relevant' criminal convictions for the Bill.

We believe the initial grant of a personal licence should be undertaken by the Board for the area in which the applicant is working or, if not employed, the Board for the area where the applicant resides. The same would apply to renewals - we do not believe it should be necessary for someone to apply for renewal to the same Board that granted their licence. Any review of a personal licence where a relevant offence has been committed should be carried out by the Board where the holder is presently working and a process will be developed to transmit such information to the relevant Board.

We will consider in discussion with the Department for Culture, Media and Sport, the possibility of a central database including how such a system could operate and who would run it.

Some consultees have queried whether the designated personal licence holder is required to be on the premises during all opening hours. We can confirm that this will not be the case.

Occasional Licences and Occasional Permissions

We support the Nicholson Committee's approach to Occasional Licences and Occasional Permissions. However, we would welcome views on the desirability of some form of regulation for Occasional Permissions, perhaps through training.

Grounds for Refusal of a Premises Licence

We support the Nicholson Committee's approach to grounds for refusal for the grant (or provisional grant) of a premises licence. However, any Board exercising its discretion in this area will be required to act within the overall national framework. Further consideration will be required of the grounds in relation to transfers and variations.

On overprovision, we have already announced for off-sales that we would require local Licensing Boards to make a proactive assessment of local provision in consultation with the local community, police and licensed trade before the new regime takes effect. We intend to extend our approach to over provision to all licensed premises where the provision of alcohol is the main business. We will seek early advice from the proposed National Licensing Forum on what constitutes over provision and how it should be tackled. The Board's conclusions should be reflected in their policy statements and arrangements would be made for regular review.

We intend to extend the 'relevant criminal convictions' qualification to applicants for premises as well as personal licences. We will ensure this is applicable to companies and partnerships as well as individuals.

We support the Committee's proposals of allowing reapplications within 1 year or sooner if circumstances have changed.

Your Views

We would welcome your views on the following:

Standard national licence conditions

- Should we seek to maintain high standards in the industry by developing standard national licence conditions for off-sales and the provision of adult entertainment and either national conditions or guidance for late opening premises?
- At what point should premises be considered to be 'late opening'?
- We would welcome your views on the types of conditions that might be imposed.

Premises licences

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

Occasional permissions

- Do you agree that we should seek to impose some controls on occasional permissions for voluntary organisations?
- What would be the best way to do that?

Overprovision

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

Chapter 5

Licensing Hours

The Nicholson Report

The Nicholson Report proposes the removal of the current statutory permitted hours. These are:

Off-sales: Mon-Sat 8am until 10pm/Sun 12.30pm to 10pm

On-sales: Mon-Sat 11am until 11pm/Sun 12.30pm until 2.30pm and 6.30pm to 11pm

For on-sales, licensees can also apply for an extension of these hours (renewable annually) and each Board may operate a different discretionary policy on those hours and attached conditions.

The Nicholson Committee believes that the current system is unnecessarily restrictive and has been almost completely eroded by the widespread use of extensions. The Committee is therefore in favour of a system where licensees specify their hours in operating plans submitted to the Board for approval and drawn up with regard to the Board's published policy statement.

Consultation Summary

There were 50 responses from a range of interests – 35 in agreement. Most Boards supported the proposals – other views were divided. Concerns were expressed about the potential for longer opening hours than at present. The Scottish Licensed Trade Association and the Bar, Entertainment and Dance Association are strongly opposed to the removal of permitted hours. They believe that this will increase competition and lead to further irresponsible promotional activity. The Scottish Grocers Federation also opposes the removal of permitted hours – they would like to retain and extend the permitted hours for off-sales. The Scottish Council for Development and Industry supported the abolition of permitted hours and discretion for local Boards. They also suggested that the National Licensing Forum could take a strategic overview across the country.

Our Approach

We agree with the basis of the Nicholson approach and feel that the removal of permitted hours is in line with modernising a system, the original intention of which has been eroded by the practice of giving regular extensions to those hours. We are content for Boards to determine opening hours to suit local circumstances. However, it will be a mandatory requirement for Boards to set out their policy on opening hours clearly in their policy statement. Whilst it may be appropriate for Boards to take the view that a particular premises should be granted longer opening hours, they would be expected to offer justification for that decision. Policy on opening hours would have to be discussed with the local forum, including police, trade and community interests and the Board would have to have regard to their views.

However, we also understand some of the concerns of both trade and health groups who, for different reasons, oppose longer opening hours, particularly 24-hour opening.

We made it clear in the debate in the Scottish Parliament in September 2003 that there was little or no argument for any premises to routinely sell alcohol throughout the day and night and that routine 24-hour opening was not the way we intended to go.

The Licensing (Scotland) Bill

A Consultation on Liquor Licensing

We believe that there should be a presumption against 24-hour opening in Scotland for on and off-sales. We will consider further whether this presumption can be set out in the legislation.

Boards will be entitled to agree exceptions to that policy in specific limited circumstances. The circumstances in which exceptions could be made would be set out in statutory guidance.

Your Views

We would welcome your views on the following:

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

Chapter 6

Communities

We heard from many communities throughout Scotland during the consultation on the Antisocial Behaviour, etc (Scotland) Bill of their real concerns that some licensed premises can affect the quality of life in our neighbourhoods. We believe that it is important that people have a real voice in the decisions affecting their community. This in part influenced the First Minister to set up the Working Group on Off-sales in the Community (The Daniels Committee) to develop further some of the Nicholson Committee's proposals. Both sets of proposals are summarised below followed by our preferred approach.

The Nicholson Report

The Nicholson Committee recommends the continuation of the basic approach taken in the current legislation with a statutory prescribed list of those entitled to object to the grant of an application for a premises licence. This list would include community councils, property owners, residents, tenants and established religions with property 'in or near' the neighbourhood. The Committee acknowledges some shortcomings and suggests improvements to the existing definitions of neighbourhood to ensure the inclusion of those people who were not immediately adjacent yet may be subject to undesirable disturbances caused by the patrons of such licensed premises. However, the key issue would be formal residence within the local area.

The Committee recommends that those with a formal role in the system including the Chief Constable, the fire authority and any official of the local authority who has an interest should no longer be entitled to object but could submit observations or representations to a Licensing Board in respect of any application. The Board would be able to act on such observations in the same manner as objections. Local authorities would no longer be competent objectors.

Of course there are other Nicholson proposals which would also develop the community's role. These include the proposal to set up Local Licensing Fora which would include representation from the community. The Committee sees resident's groups or associations as important contributors to the local Forum.

The proposed new Liquor Licensing Standards Officers, who would be employed to supervise and monitor the system's operation, would provide a route for mediation between local communities and licensees, addressing any local difficulties directly and working to resolve them. They would also provide, ultimately, a route for investigation of more formal complaints and be able to initiate a hearing by the Licensing Board.

Also recommended is the production of a booklet by the Scottish Executive setting out in clear and simple terms the relevant law and procedures to be followed in proceedings before Licensing Boards.

The Daniels Report

The Daniels Committee feels that the Nicholson Committee's recommendations on objections do not go far enough. They do not completely resolve the uncertainty over whether all those individuals or community organisations with a legitimate interest would be able to object. The entitlement to object would still hinge on the interpretations of such words as 'in or near' the neighbourhood of a licensed premises. The Daniels Committee wishes to ensure that any individual or community group which could demonstrate an interest should have an equal right to be heard. They therefore recommend that the scope of those able to object to a new application for a premises licence should be simplified and widened to anyone who could demonstrate 'a real and material interest', following as a model the relevant objection provisions of the Civic Government (Scotland) Act 1982.

The Committee also recommends that certain people or groups designated as 'statutory consultees' should, in addition to the entitlement to object, be entitled to receive **written notice** of an application. They suggest the following:

- any person owning or occupying property that is coterminous or within 4 metres of the premises to which the application applies;
- the community council for the area in which the premises is situated;
- the Chief Constable;
- the fire authority; and
- relevant departments of the local authority, particularly environmental health, building control and, possibly, trading standards.

In particular the Committee believes that community councils should be sent a copy of an application at the outset without the need as at present to make a request for such information.

The Group also recommends that people should be given the chance to make **representations or objections**. They feel that many people do not want to simply object to a premises but want greater consideration given to certain aspects of the licence such as closing times. Allowing representations to be made rather than objections could allow for a less confrontational approach.

Consultation Summary

The majority of respondents were positive towards the Nicholson Committee's recommendations to extend the range of people or bodies that can object. Most also felt that the suggested changes remained restrictive, with suggestions for extending the range of possible objectors to premises users and to local elected members including MSPs and councillors. Others suggested that any individual or group of individuals should be free to make an objection if they were affected in any way by the granting or alteration of a licence.

Our Approach

In considering the role of communities within the licensing system, we believe it is important that they have a role in commenting on and helping to develop local policy and that **an appropriate range** of people have an opportunity to make their views known to the Board in relation to individual licences and licence applications.

The community role is relevant not only to the grant of licences but where problems arise with existing licences. We support the approach taken by the Daniels Committee of widening the entitlement to object and make representations to anybody who can show a 'real and material interest'. This would apply to all licensed premises. In addition, we support those additional elements of the Nicholson proposals which will be the key to ensuring the community also has a voice when problems arise.

We support the proposal to give communities a role in commenting on wider policy decisions through the establishment of local licensing fora (as set out in Chapter 2). It will be important that the local forum is as representative as possible of the local community to ensure that a range of views is taken into account. This should reflect, for example, the views of local residents, local licensees, young people (through links with youth fora) and the local Alcohol Action Team.

Following our own consideration of the ECHR issues involved, we are of the opinion that local authorities may continue to make objections to licences.

We believe that the 1976 Act is inadequate in allowing all those people who have a legitimate interest to make their views known. People are subject to the very restrictive definition of 'neighbourhood' which has often led to the complete exclusion of some groups of people who should have a voice within the system. This has led, for example, to the exclusion of groups representing local schools.

This approach does not mean that communities will be given a veto over the establishment of licensed premises in their area.

The proposed new system would widen the range of people who are in a position to make their views known since this would depend on your legitimate interest in the issue rather than demonstrating that you are an immediate neighbour. However, objections cannot be frivolous or irrelevant - they would have to relate to one of the grounds under which the Board is permitted to refuse applications. Those grounds are set out in full in Chapter 4 but include an application which is contrary to the five licensing principles:

- (a) the prevention of crime or disorder;
- (b) the promotion of public safety;
- (c) the prevention of public nuisance;
- (d) the promotion of public health; and
- (e) the protection of children from harm.

It would still be for the Licensing Board to take the decision, weighing up the objections and representations from the community against all other relevant factors, as they do now.

We believe that the combination of the Daniels approach to objections and representations and the other elements of the Nicholson proposals will lead to a much improved position for local communities. The following example shows how this could be expected to work.

Example

A single street has several bars and the local residents are already unhappy about the noise and disorder occurring along the street during weekday evenings when many of the bars run events to attract customers. Not all of the bars employ door staff and customers are taking alcohol outside the premises and dropping glass in the street. Some of those customers appear to be under age. An application is then submitted to the Licensing Board to turn an unused retail outlet on the street into a multi-bar venue.

Our proposals could address this situation in a number of ways:

New Licence

Licensing Boards would have already carried out an overprovision assessment using guidance developed by the National Licensing Forum and in consultation with the local community, police and licensed trade. This would enable the Board to judge whether there were already sufficient licences within the area and to make this clear in their policy statement. If the Board had already decided that the area was overprovided for, the licence application would be rejected.

If the Board believed there was room for another establishment, it would be able to advertise the application for objections and representations and take a decision based on the licensing principles. Anyone with a 'real and material interest' could make their views known.

If the Board decided to grant the licence it could impose appropriate conditions on the licence to ensure the licensing principles were adhered to and to reduce nuisance and disturbance to the local community. This could include hours appropriate for the area and other appropriate local conditions as well as any relevant standard national conditions. In imposing such conditions, the Board would be able to take into account the views of local residents, the police and the local authority's environmental health officers amongst others.

Existing Problems

The community might want to take action to address the existing problems of noise and local disturbance.

The first step would be for any member of the community to contact the local Liquor Licensing Standards Officer to discuss the problem. The LLSO would liaise with the licensees and seek to find a solution. He could also liaise with other agencies such as the local authority's environmental health department. He would use his experience of resolving problems in other premises and his knowledge of the Board's policies. The LLSO would point out that licensees are breaching the terms of their licence if they do not comply with a no-proof no-sale policy and ask for proof of age. A meeting could be arranged between the community and licensees with the LLSO serving as mediator. Options, such as the use of door staff, could be discussed. The licensee could suggest alternative solutions.

If informal mediation and discussion were unsuccessful, and the LLSO felt that the licensee was breaching the terms of his licence, the LLSO could consider other action. An oral warning might be given requiring the licensee to take certain steps. This could be followed by a written warning and, ultimately, an oral hearing by the Licensing Board initiated by a complaint from the LLSO or from anyone entitled to object. The Board would weigh up the evidence from the licensee and the objectors and could decide to impose an appropriate sanction ranging from amending licence conditions to suspension or revocation of the licence.

In most cases we would expect that compromise at local level between responsible licensees and community members should resolve problems without the need for a formal complaints process. The formal process is available when it is needed but also offers a range of options designed to reduce confrontation and resolve the problem at the lowest possible level in the interests of both the licensed trade and the community.

We can also confirm that the Scottish Executive will, in conjunction with the National Licensing Forum, seek to publish a basic guide to liquor licensing containing relevant information for both applicants and objectors.

Your Views

We would welcome your views on the following:

Objections and Representations

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

Chapter 7

Monitoring and Compliance

The Nicholson and Daniels Reports

The Nicholson and Daniels Reports have proposed the following range of measures:

Liquor Licensing Standards Officers (LLSOs)

- A new system of Liquor Licensing Standards Officers to supervise and monitor the new system, co-operate with licensees, report licence breaches to the Board and statutory powers of entry to all licensed premises. The Daniels Report recommends in addition that these officers should be independent of Boards and employed by local authorities, have a clear mediation role, a clear national job description and undertake diversity and racial awareness training.

Exclusion

- Amendment to the Licensed Premises (Exclusion of Certain Persons) Act 1980 to extend its scope to all licensed premises including off-sales and to give licensees power to apply for an order where the court has not sought to impose one at the time of conviction. The Daniels Report supports this and adds that orders should be triggered by disorder not just in but also 'associated with' a licensed premises.

Police Powers

- Extend police powers of entry and inspection under the 1976 Act to cover all licensed premises including off-sales and registered clubs.
- Retain existing power for a Chief Constable or above to apply to the Board to close licensed premises for public safety reasons.
- Extend police closure powers to provide a mechanism for immediate closure for public safety reasons.

Sanctions and Penalties

Premises Licence

- The Nicholson Report recommends a staggered range of sanctions from a formal warning to revocation. The Daniels Report supports this.
- Where a sanction involves closure for any period and an appeal is marked, the licensee should be able to apply for interim suspension of the closure pending disposal of the appeal and this should be heard by a local Sheriff within 2 weeks. The Daniels Report recommends that closure should not take effect until after the hearing on interim suspension to avoid unduly penalising small businesses.

Personal Licences

- Where a holder is convicted of a relevant offence, it should be for the Board for the area in which the person is working rather than for the court to apply an appropriate sanction. That sanction should be suspension for anything up to 6 months or forfeiture.
- Arrangements should be made to link a computerised database of personal licence holders to the Scottish Criminal Records Database.
- It should be open to the Board to call the premises licence holder to account where a personal licence holder has been convicted of a relevant offence and to apply an appropriate sanction.
- There should be additional power for the Board, following a complaint, to impose a sanction where there has been no relevant offence but the person has not carried out their duties in a manner consistent with the licensing principles. This should range from admonition or endorsement to suspension or forfeiture.

Consultation Summary

A majority of consultation respondents agreed that there should be liquor licensing standards officers provided there is clarity over their role and funding. There was universal agreement on exclusion orders and extending police powers of closure.

On premises licences, the 27 respondents were largely in favour of a range of sanctions. On closure and interim suspension, views were mixed. A small number of respondents flagged up a serious detrimental effect on businesses. On personal licences, most were in favour of the proposals on action to be taken where a personal licence holder has committed an offence and where the personal licence holder has failed to carry out his or her duties in an acceptable manner.

Our Approach

We agree with the Nicholson proposal to introduce liquor licensing standards officers under the new system and with the powers those officers would have including a statutory right of entry to all licensed premises. We see this as a key element of the new system. The LLSOs would have two clear roles:

- Guidance - Power to act as a source of advice and guidance for licensees and for the community.
- Mediation - Power to mediate between communities and the trade or between any two parties where there is a need to resolve a local problem and develop a local solution.
- Complaints - Power to report complaints to the Board recommending an oral hearing where mediation, guidance and support have failed to resolve a problem or where there has been a serious or continuing breach of a licence.

In addition, we endorse the additional proposals made by the Daniels Committee including the recommendation that LLSOs should be employed by Local Authorities. Further detailed work will be required on a national standard job description and qualifications for the post and this could, as suggested in the Nicholson Report, be an issue for consideration by the National Forum. The Expert Group will be asked to consider further the governance aspects of the post and issues which need to be settled for legislation.

We agree with the Nicholson and Daniels proposals in relation to Exclusion Orders. In particular, we believe that the additional measures suggested by the Daniels Committee will make this an effective means by which to target pockets of antisocial behaviour occurring outside licensed premises. We must do everything we can to put a stop to harassment and intimidation wherever it occurs within our communities. We must also ensure that shopworkers can work safely and without fear.

We also agree that the police powers of closure should be updated and should in future be applicable to all licensed premises.

On the sanctions to be applied to premises licences, we acknowledge that Boards need more options and that the current legislation does not deliver those options. This is to the detriment of everyone working within the licensing system – both for licensees, who should be entitled to a warning in some circumstances and for communities, who have a right to expect that effective action will be taken in response to the breach of a licence. We therefore support the idea of a range of sanctions and we will ask the Expert Group to do further work on that. We are attracted to the following type of system:

- mediation and guidance (LLSO);
- oral warning (LLSO);
- written warning (Board); and
- oral hearing (Board).

and to the following range of sanctions to be applied following an oral hearing:

- modify licence conditions;
- suspend licence for a defined period; and
- revoke licence.

Guidance would be required for Boards on how to operate the system and it is clear that a judgement would be required to be taken not only on the use of the sanctions but on the stage at which an oral hearing would be appropriate. In some cases of very serious licence breach it may be appropriate to progress straight to an oral hearing.

On interim suspension of a licence pending a hearing by the Sheriff, we have taken account of the range of views and the alternatives put forward by the Nicholson and Daniels Report. Whilst we appreciate the pressure closure may put on a small business, this will not be a decision which is taken lightly by Boards. The new system will require Boards to give reasons for decisions and to act in a proportional manner. It will, in addition, require Boards to follow procedures (as set out above) which give licensees the opportunity to remedy an emerging problem before suspension or revocation becomes an option. Under those circumstances, we support the Nicholson proposal for immediate closure where the Board decides that licence suspension is the correct sanction. However, we will consult further with Sheriffs to ensure that hearings can be held promptly.

On the sanctions to be applied to personal licences, we are content with the Nicholson proposals. We will give further consideration to the treatment of pending court proceedings.

Your Views

We would welcome your views on the following:

- Do you agree that Liquor Licensing Standards Officers should be employed by local authorities rather than by Licensing Boards?
- Do you have further views on how a tiered complaints system should work and what the range of sanctions should be?
- 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?

Chapter 8 Training

The Nicholson and Daniels Reports

The Nicholson Report proposes the following range of measures:

- Appropriate training prescribed in regulations should be made available to Board members.
- There should be some provision to cater for situations following Council elections where not all members have received training prior to a sitting.
- In addition to the training requirement for personal licence holders, encouragement should be given to training for all who work in licensed premises.
- Training courses should be given official accreditation and specified in regulations.
- Casual staff do not need to be given formal training but should be given in-house basic instruction by the designated personal licence holder and should at all times be under the supervision of a trained person.

The Daniels Report proposes:

- Training courses should be mandatory for personal licence holders and on-site training provided for all other employees with personal licence holders undertaking refresher training every 5 years.

Consultation Summary

A majority of consultation respondents were in favour of Board member training being mandatory but agreed that there should be special provision to cover the period after a Council election. This could be done by delaying meetings or imposing a time limit. On staff training, again the majority felt it should be mandatory for all and not just personal licence holders. There should be a duty on personal licence holders to ensure the training is carried out. Most agreed that casual staff need not undertake training but that there should be a clear definition of 'casual' to avoid licensees using this as a loophole.

Our Approach

We believe that training for Board Members must be mandatory under the new system and are pleased to note that some Boards are already making training available on a voluntary basis. We intend to make special provision to cover the period following Council elections and believe this can be done by allowing Board members a period of 3 months to complete their training. Board members would not be allowed to sit until their training had been completed.

We acknowledge that personal licence holders should attend a mandatory training course appropriate for the type of licensed premises they will be working in. **We also support the recommendation by the Daniels Committee that refresher training should be carried out every 5 years.**

On staff training, we believe that this is an important mechanism by which we can maintain standards and indeed raise standards where this is required. We do not think it will be sufficient to merely encourage such training without any capacity to monitor whether adequate training or any training at all is being delivered. We believe it is appropriate for those **permanent members of staff engaged in serving alcohol** to be trained to an appropriate standard. This could be achieved as follows:

- permanent staff who are servers of alcohol must receive appropriate mandatory training at an agreed national level (which would be lower than that required for personal licence holders);
- this mandatory training should be delivered only by a qualified trainer;
- the options for such training would involve:
 - staff attending an externally provided and nationally accredited training course;
 - training provided in-house by a personal licence holder who has qualified as a trainer and where the training to be provided has been nationally accredited; and
- casual staff should be exempted from the need to receive mandatory training to a national standard but should be given basic on-site training by any personal licence holder. This would be subject to a clear definition of 'casual' and this might refer to a period of less than 2 to 3 months within those premises.

In addition, we would like views on whether the designated personal licence holder should be placed under a duty to ensure that the mandatory staff training is carried out. The provision of training should be monitored by the Liquor Licensing Standards Officers and we would need to consider further what evidence should be provided.

Your Views

We would welcome your views on the following:

- Do you agree that Board members should be obliged to undertake their mandatory training within 3 months of elections before sitting?
- Do you agree that personal licence holders should be obliged to undertake refresher training every 5 years?
- Do you agree that all permanent members of staff who are serving alcohol should receive appropriate mandatory training to an agreed national standard?
- 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'?
- How should 'casual' be defined? Would a period of 2 or 3 months be appropriate or less?
- Should the designated personal licence holder be placed under a duty to ensure that training of permanent staff is carried out?
- How can this best be monitored?

Chapter 9

Irresponsible Promotions

The Nicholson Report

The Nicholson Report notes the particular dangers of binge drinking and the undesirable consequences in terms of public disorder and violence. The Report notes that not all promotions or price discounting are a problem. It is grossly irresponsible discounting and promotions which encourage binge drinking which should be controlled. The Daniels Report supports this.

The Nicholson Report recommends wording for a standard national licence condition based on preventing those discounts and promotions which encourage excessive consumption together with the requirement to display sensible drinking material and to make available at all times reasonably priced non-alcoholic drinks. A breach of the condition should lead to appropriate sanctions under the general established procedure.

Consultation Summary

There was a high level of support from 70 respondents although there was concern about how this could be defined in legislation and effectively monitored. There was general agreement that any provision should also apply to off-sales. The Bar, Entertainment and Dance Association recommends the Perth & Kinross approach to a minimum price tariff as a licence condition. There was also some support for price control from health interests.

Our Approach

It is clear that there is a general consensus that the issue of irresponsible promotions must be tackled. **We agree that something must be done to prevent the type of wholly unacceptable commercial activity highlighted by the Nicholson Committee which merely serves to encourage binge drinking and to discredit responsible members of the licensed trade.** We will not accept promotions and discounting which encourage those antisocial behaviours that we are working hard to address. Neither do we wish to leave unchallenged an area of activity which also undermines the work the Executive is engaged in under the Plan for Action on Alcohol Problems, the overall purpose of which is to reduce alcohol related harm in Scotland.

However, it will be important to establish a workable solution. **We believe that this solution must be established at a national level. We will consider further whether we can take any action to address pricing. We also intend to ask the Expert Group to advise us on how we might seek to define an 'irresponsible promotion' leading to a standard national licence condition and statutory guidance for Boards.** On this issue, we clearly need to involve the licensed trade to identify existing best practice.

We know that some Boards are looking for ways to implement the Nicholson proposals now. Although we intend to target this issue through the new legislation, **we will seek to make guidance available earlier for voluntary implementation prior to the new legislation taking effect.**

Your Views

We would welcome your views on the following:

- Do you agree that this issue is best tackled at a national level?
- Do you have any views on how an 'irresponsible promotion' can best be defined?

Chapter 10

Children and Young People

The Nicholson and Daniels Reports

The Nicholson Report deals with two issues concerning children and young people:

- access to on-sale licensed premises
- sale and supply of alcohol

Access to Licensed Premises

The Nicholson Committee recognises and attempts to address the complicated provisions which currently regulate the access of under 18 year olds to licensed premises and which were supplemented in 1990 by the introduction of a system of children's certificates. Those certificates allow under-14s to enter a bar area to eat a meal when accompanied by an adult between 11am and 8pm. They seek to introduce a system which will allow young people to be introduced to alcohol in a controlled way and which will be of general benefit to family life and to tourism.

The Report proposes the removal of the current provisions. Instead, there should be a statutory presumption that under 18 year olds have a full right of access to licensed premises subject to restrictions set out in the operating plan. Premises may choose to opt-out. The Report also recommends the preparation of standard national licence conditions by the National Forum.

Sale and Supply of Alcohol to Under 18 Year Olds

The Nicholson Report recommends retention of the current prohibitions and of the existing provisions including allowing 16 and 17 year olds to purchase lower alcohol drinks for consumption with a meal with amendments to the list of drinks and extending this to all parts of a licensed premises, not just a bar area. The Report suggests amending the current anomaly which allows children as young as 5 to legally consume alcohol and whilst this might be appropriate in a domestic setting, suggests it should be prevented in licensed premises.

Both the Nicholson and Daniels Reports support the introduction of a national proof-of-age card. The Daniels Report also recommends Executive support for a no-proof no-sale initiative and is attracted to test purchasing.

Consultation Summary

33 of 63 responses opposed increased access by children to licensed premises. Concerns were raised by a wide range of organisations - licensed trade associations, ACPOS, Licensing Boards and health organisations. Those concerns focused on the inherent dangers in allowing children access to some premises which might be highly unsuitable and safeguarding their interests. There was general agreement on the approach to 16 and 17 year olds although the provision needs to be updated. The majority were also in agreement with proof-of-age cards with several in favour of test purchasing.

Our Approach

One of the fundamental principles of the new system will be the protection of children from harm. The system itself must be tested against the licensing principles including whether or not it can, as proposed, adequately deliver that protection for children. We need to protect children from environments which are wholly unsuitable and we need to prevent them being placed in a position

where it is easy for them to circumvent the law and get hold of alcohol. The interests of our communities will not be served by allowing any relaxation of controls which will undermine our extensive efforts to combat under-age drinking.

We want pubs to become more child-friendly in Scotland and to encourage an environment where families can socialise safely together. **However, we feel that this can best be done by requiring licensed premises to actively consider their suitability for children by 'opting in' to access to children rather than 'opting out'.**

Under our proposals, all licensed premises will be affected, including off-sales premises. However, we do not wish to impose an unduly bureaucratic requirement on premises that have not previously been required to consider this issue. For those premises, the emphasis will be on a light touch with a simple opt-in procedure. This might, for example, amount to simply answering a suitable question on the licence application.

For other premises, we will need to be satisfied that suitable arrangements are in place for children. We therefore intend to develop a set of standard national conditions to be complied with where access for children is desired. We will again seek to ensure that there is a simple administrative means to 'opt in'. This can be done through operating plans. The standard conditions will be referred to the Expert Group for consideration.

On sale and supply to under-18s, we support the Nicholson approach of retaining the current controls, allowing 16 year olds to buy and consume certain low alcohol drinks for consumption with a meal but otherwise moving to make it illegal for children under 18 to consume alcohol on licensed premises.

We note the points made regarding proof-of-age cards and have indicated that we will support a no-proof no-sale initiative for off-sales in Scotland. We see this as helping to deliver protection for children within the new system and a means to support the majority of responsible retailers. **We also intend to make it a standard licence condition that premises must operate a no-proof no-sale policy.**

We see no reason to restrict this approach to off-sales and therefore propose to extend our approach on no-proof no-sale to all licensed premises.

We have indicated that the Lord Advocate will be exploring with stakeholders whether there is scope for extending test purchasing to alcohol in light of the tobacco test purchasing pilots.

Your Views

We would welcome your views on the following:

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

Chapter 11

Registered Clubs

The Nicholson Report

The Nicholson Report recommends bringing all registered clubs within the new licensing system, therefore requiring them to comply with the requirement for both premises and personal licences. However, there should be recognition within the premises licence of any different provision necessary to recognise the special character of clubs.

Stakeholder Views

There was majority support for bringing registered clubs within the licensing system. Only 5 responses opposed this move. Those opposed included representatives of two existing types of registered club.

Our Approach

Members clubs cover a wide range of premises from miners welfare to sports clubs to university unions. Their very nature is to provide a welcome service for sections of the local community and therefore to help to support that community. We need to ensure that we can respect the special nature of members clubs but we also need to consider whether an entirely separate system is required to achieve that.

In our view, an entirely separate registration system is not required and we believe that registered clubs should be brought within the licensing system. We believe that we can adequately reflect their special nature through the conditions to be attached to the premises licence. We would intend to consult clubs further on what those conditions should be. For example, this may require separate arrangements for training requirements for staff and the standard of premises.

On personal licences, we are inclined to require clubs to have a designated personal licence holder responsible for running the premises since, in most cases, clubs employ a manager (or steward) who could be suitably trained. We do not feel this is necessarily incompatible with the constitution of clubs where responsibility for club business lies with the members. The personal licence simply allows the holder to manage the premises and supervise others. He or she is responsible for ensuring that the requirements of licensing law are followed. This does not override the overall interests of a management committee, as it does not override the interests of a bar owner who is not the designated personal licence holder. However, we would like further views on whether this will be a suitable approach for very small clubs with limited resources.

We agree that both the police and Liquor Licensing Standards Officers should have a right of access to clubs as they will to all other licensed premises.

Your Views

We would welcome your views on the following:

- What conditions should be attached to the premises licence to recognise the special character of clubs?
- Do you agree that the bar manager or steward should be the designated personal licence holder?
- Are there any very small clubs which should be exempt from the personal licence requirements?

Chapter 12

Fees

The Nicholson and Daniels Reports

The Nicholson Report notes that a new fee structure will be required for the new system. The Report recommends that fees should continue to be set centrally and reviewed every 1 or 2 years, that the system should as far as possible be self financing and that different levels of fees for clubs and premises of varying size and capacity would be appropriate. The Daniels Report recommends that we undertake financial modelling to determine the extent to which costs can be recouped through the licensing fee.

Consultation Summary

There were around 39 responses on fees, half from Licensing Boards. A majority agreed that the system should be self financing although there were concerns about the cost of Liquor Licensing Standards Officers and suggestions for annual retention fees. Views were evenly split on whether fees should be set centrally or locally. It was felt that fees for a self financing system should be set locally to reflect cost differences based on geography and number and type of premises. There was broad agreement that we should establish different fee levels for different types of premises but further work needed on how that should be done.

Our Approach

There are three key issues. The first is how far the licensing regime can be self financing without the costs of a licence becoming untenable. The current licence fee is £160 and should certainly be substantially increased, particularly since premises licences will be open-ended. The key new burden on local authorities would be the costs of Liquor Licensing Standards Officers, however, this will be offset by the reduction in some other administrative costs.

The second issue is how we can fund the system properly by spreading some of the income. If premises licences are open ended there will be no continuing fees. We need to consider the options.

The third issue is the argument some Boards make for locally rather than centrally set fees. This is on the basis of local fluctuations in costs.

We cannot resolve all of these issues now. However, on the issue of locally or centrally set fees, we disagree that local fee setting will provide the best mechanism to reflect differential local costs. Although local costs may be different, the number of licences and fee income will also vary substantially. We therefore need to ensure that we set fees at a suitable level but believe this should be done within a coherent national framework.

On funding the system, we intend to ask the Expert Group to review the fee system, to consider further what level of fees is required to cover the costs of the new system and to consider further how this can be achieved without placing an unnecessary burden on small businesses. Our preference, in line with policy in other areas, must be for full cost recovery through the licensing fee.

We support the principle of graduated fees for different types of premises. There will also require to be different fees for premises licences and licence variations, etc.

In addition, we believe there will be a need for a retention fee and will ask the Expert Group to consider how a retention fee for premises licences might be charged.

In the meantime, and after consultation with COSLA, we have agreed to raise licence fees to reflect inflation.

Your Views

We would welcome your views on the following:

- Do you agree that a retention fee for premises licences should be charged?
- How can this best be done?

Chapter 13

Board Procedures

The Nicholson Report

The Nicholson Committee sees a major shortcoming of the present legislation as the scattering of purely procedural provisions throughout the Act. Following the example set by other pieces of legislation, in particular the Civic Government (Scotland) Act 1982, they recommend that such provisions should be set out in a self-contained form, preferably as rules introduced by secondary legislation.

To ensure consistency and ease of use the Committee recommends that the prescribed forms used by applicants and objectors should be standard for all licensing areas and available from council offices. Forms should be available and accepted in electronic format although they recognise there is a need to consider systems to tie an application to its fee payment.

At present, for an objection to be considered by the Board, it is up to the objector to ensure the licence applicant receives the objection before the Board hearing. The Committee sees this requirement as unduly onerous particularly as the lay objector usually does not benefit from professional representation. They therefore recommend that this should in future be undertaken by the Licensing Board.

A Licensing Board is under a duty to publish in a local newspaper the list of applications to be considered. The Committee sees the necessity for the list but recommends that in future lists of applications should be grouped by postcode number.

The Daniels Report

At present an applicant for a licence should give 3 weeks' notice in writing to every occupier of premises situated in the same building. The Daniels Committee does not believe that this system operates successfully. They therefore recommend an A3 notice, set out in a recognised national format, to be displayed for 21 days by the applicant outside the premises within which time any objections or representations should be made. A minimum of 7 days' notice should be given of Board meetings.

The Committee also recommends the adoption of the late objection provisions from the Civic Government (Scotland) Act 1982. This would allow the Board to consider a late objection if they were satisfied of the reason for its lateness.

The Committee believes that it should be mandatory for Licensing Boards to display applications on their websites (by 2005) and that objections and representations could in future be notified to the Board by hand, post, fax or e-mail. The Group also sees a need for a clear unambiguous process for procedural failures by applicants, those making objections or representations and clerks.

The Committee is concerned about the atmosphere and formality of Board hearings and believes there is a need to ensure that both applicants and objectors feel relaxed and therefore capable of presenting their views to the best of their ability within a process that they understand and trust.

The Group therefore recommends that the National Licensing Forum should issue national guidance with the aim of making the process of appearing at a Licensing Board hearing less intimidating and more consistent.

Consultation Summary

There was general approval for the suggested modernisation of the system. Most comments centred on the need to publish application lists in the local newspapers with several Boards questioning its usefulness compared to cost and a concern that listing by postcode was not the clearest way to convey application information. Several responses suggested that alphabetical order by street and ward would be more appropriate.

Our Approach

We support the proposal for national standard electronic forms, believing this will simplify the system for its users and ensure a consistent standard throughout Scotland. We appreciate that further work may be needed to ensure that local authorities are able to tie an electronic form to its fee payment. We also believe it should be possible for objections and representations to be notified by hand, post, fax or e-mail.

We broadly support the notification procedures and procedural improvements suggested by the Daniels Committee. We will also ask the National Licensing Forum to design the A3 pro-forma notice which will have to be displayed at proposed licensed premises.

We support the improved use of websites and will work with local authorities to ensure information is available on line before the new system takes effect.

When these new improved systems are in place we see no reason to continue with the process of advertising applications in local newspapers.

In line with the recommendations in Chapter 6, it would in future be for the Board to notify the applicant of objections.

Your Views

We would welcome your views on the following:

A3 Notice

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

Board Hearings

- How can we make Board hearings less intimidating?

Chapter 14

Appeals

The Nicholson Report

Under the 1976 Act an appeal lies to the Sheriff by summary application against some decisions of a Licensing Board. A further appeal may be made to the Court of Session but only on a point of law. On other decisions the available procedure is judicial review. The Nicholson Report notes that the present system is unacceptably slow and recommends that appeals should in future be heard by a Sheriff Principal by stated case to allow for quicker disposal. In addition, all decisions by Boards, other than purely procedural ones, should be open to appeal. Boards would continue to have the right to be party to an appeal but Chief Constables should only have this right where they participated in earlier proceedings.

Boards should be required to give reasons for decisions following a request. Existing grounds of appeal should be retained but, reflecting recent developments, the 'unreasonable manner' ground should be changed to one reflecting the ECHR concept of proportionality.

Consultation Summary

Around 20 comments were received on these proposals, mainly in support. There were concerns that allowing all Board decisions to be open to appeal would result in a strain on Board resources. It has also been suggested that under a stated case process, recording of Board proceedings should be mandatory to ensure a factual record for appeals based on incorrect material fact.

Our Approach

We broadly support the Nicholson proposals on appeals. Appeal processes need to be robust and effective and we believe that the Nicholson approach meets this requirement.

However, we will consult further with Sheriffs Principal as we move towards a draft Bill.

Chapter 15

Miscellaneous Matters

Sales of Alcohol from Petrol Stations

The Nicholson Committee considered the problems surrounding the licensing of premises forming part of, or ancillary to, filling stations which are not located on motorways. They do not consider it necessary to have a standard licensing provision to deal with this matter and consider that it can be left to Licensing Boards.

The UK Government has legislated against the granting of such licences if the premises are used primarily as a garage for the sale of petrol. A key argument for this decision is that it is important not to give any encouragement to motorists to drink and drive. We find some merit in that argument. However, there is clearly an important rural dimension to be considered in some parts of Scotland where a local garage may also be the only available local shop.

Your Views

- We would welcome your 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.

Motorway Service Stations

The Nicholson Committee recommends the retention of the licence prohibition for motorway service stations, which has also been retained in England and Wales.

Our Approach

We intend to continue the licence prohibition for motorway service stations.

Passenger Ships and Boats, Aeroplanes and Trains

At present ships, boats, aeroplanes and trains carrying passengers and travelling within Scotland largely do not require a licence to sell alcohol. The Nicholson Committee considered these exemptions and suggests there is a need for clarity not readily available from the present legislation. They make no further recommendations except for the removal of restrictions for the sale of alcohol on boats on Sundays.

The UK Government agreed that, for England and Wales, there was no case for imposing further regulations on flights as internal journeys tended to be relatively short thereby limiting the opportunity for misuse. Although such problems could arise on long haul flights, there were already firm laws with serious penalties to cope with those who caused disorder on aeroplanes.

For trains there were a number of practical problems. They could travel through many licensing districts during a journey and lacked the permanence of buildings or boats, therefore not lending themselves to the premises licence approach. In those circumstances, and in the absence of major problems in recent years, it was decided to continue the exemption.

It was acknowledged that there needed to be some mechanism to prevent the sale of alcohol on train lines that are a persistent source of disorder and nuisance. Therefore a power for a chief police officer to seek a prevention of sale order from a court was proposed. This can relate to all trains running between specified towns between specified times. The order would remain in force until rescinded by the courts.

In Lord Justice Clarke's report following the Marchioness disaster in 1989 he stated:

'If we are to retain liquor licensing laws and require premises to be licensed to sell alcohol, then the reasons that commend themselves to require such premises on land to be licensed seem to me to apply with at least equal force in respect of vessels. Indeed it might be said that safety concerns demand even higher standards for those in charge of serving alcohol on board boats.'

The UK Government saw Lord Justice Clarke's comments as relating to those ships and boats which essentially provided a mobile party. They therefore proposed that for passenger ships and boats carrying out both river trips and costal excursions, at least one member of the crew should by law be required to hold a personal licence and to be on board during the period in which alcohol was sold or supplied to passengers. Such ships and boats would also require a premises licence issued by the licensing authority for the home port.

Our Approach

We are attracted to following a similar policy to that established in England and Wales for **passenger ships and boats, trains and aeroplanes**. Passenger ships and boats journeying between points within Scotland would be brought within the licensing system. We would however follow the Nicholson Committee's recommendation to remove the Sunday trading restrictions for passenger vessels. Maritime authorities would be given specific authority to make representations about the premises licences. Aeroplanes (whilst airborne) would continue to be exempt. Trains would continue to be exempt but we would remove the present anachronism that food must also be available. We would also wish to consider giving additional powers to the police to seek an order to prevent alcohol sales on certain train lines which are a persistent source of nuisance and disorder.

We will also ensure that under-18s are prevented from buying alcohol on trains, aeroplanes, ships and boats.

Your Views

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

Wholesale Selling

At present a wholesaler selling a case of wine or two cases of beer at a time from premises used exclusively for wholesale (or other licensed premises) does not need a liquor licence. Whilst the quantities defining wholesale may make sense in terms of excise duty, they do not in many respects match modern purchasing trends. Few wholesalers could now be said to supply alcohol solely to the hospitality and retail trade. In fact, certain warehouse chains can be found on our High Streets.

Our Approach

We believe it is now appropriate to bring wholesalers into the licensing system. They would be subject to both the personal and premises licence requirements.

Your View

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

Mail Order Including Internet

Although the Nicholson Committee sees no need for express provision in primary legislation in respect of sales of alcohol arranged by telephone, mail order or through the Internet, they do see the need for this matter to be kept under review. However, the majority of consultation responses expressed the view that without any provision there would be an ever growing loophole in licensing law. Although most sales would be carried out through credit cards and unlikely to become a problem area for underage drinking, the absence of any licensing requirement would enable such businesses to effectively ignore the principles and guidance on which the rest of the system is based.

We intend to give further consideration to this issue but are seeking additional views.

Your Views

- Should those who run mail order, telephone and Internet alcohol sales businesses be required to hold a personal licence?
- Should their storage premises be required to have a premises license?

Trading in Smuggled Goods

The Nicholson Committee recommends the continuation of the existing provisions relating to hawking, bartering and trafficking without a liquor licence. The Daniels Committee recommends adopting the clause concerning the 'Keeping of smuggled goods', as incorporated in the recent new England and Wales licensing act. Such a clause would prevent the use of licensed premises as outlets for smuggled alcohol and tobacco.

Our Approach

We would maintain trafficking, hawking and bartering offences, updating them as necessary and including wholesales. We would include a clause on the 'keeping of smuggled goods'.

Credit Sales

The existing law requires alcoholic drinks for immediate consumption on the premises (except with a meal) to be paid for in cash at the time of the sale or supply. These laws apply to registered clubs as they do to pubs. Today, these laws are widely ignored, do not apply to off-sales and are rarely enforced.

Our Approach

In the interests of tourism and as a reflection of modern purchasing arrangements, we intend to change the law to permit purchasing using credit cards.

Theatre Exemptions

The Nicholson Committee recommends the removal of the special provision for theatres erected before 1904 which meant they fell outwith the normal licensing requirements.

Our Approach

We intend to end this anachronism and include these theatres within the licensing system.

Armed Forces Canteens

Messes and other facilities operated by the Armed Forces where alcohol is sold are exempt from the present legislation.

Our Approach

Due to the unique circumstances of service life it is our intention to replicate such an exemption in the forthcoming legislation.

Seamen's Canteens

A war-time measure which the Nicholson Report recommends 'consigning to history'. Consultation respondents agree.

Our Approach

The Seamen's Canteen Licence makes special provision for those voluntary societies running clubs and centres providing for seafarers. We have consulted with the Merchant Navy Welfare Board who have indicated that they would prefer the retention of seamen's canteens, which provide a service for overseas seafarers. We have decided to consult the voluntary societies operating in Scotland and to consider further before taking a decision.

Drinking-Up Time

The Nicholson Report recommends extending drinking-up time from the current 15 to 30 minutes to assist orderly closure. A significant minority of consultation respondents disagreed on the basis that it would annoy local residents, encourage stockpiling of drinks and undermine further the trading differential between pubs and clubs.

Our Approach

We see this having no particularly beneficial impact on orderly closure. The current system appears to work well and we intend to continue it.

British Summer Time

There was universal approval from consultation respondents for the Nicholson suggestion of a uniformity of approach to British Summer Time. This would involve a provision in the Bill such that on those days, closing time should be in reference to the number of authorised opening hours after midnight.

Our Approach

We agree with this proposal.

Summary of Questions

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. Do you agree with the issues identified so far for those standard national conditions (off-sales, adult entertainment and late opening premises are covered in Chapter 4):
 - no-proof no-sale
 - irresponsible promotions
 - access by children.
3. What other issues would be suitable for national standard conditions?
4. Do you think that on some of these issues the formulation of national conditions should remove the need for additional local conditions? If so, on what issues would this apply?
5. 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? If not, what period would you propose?
6. Do you agree that Board membership should be limited to a maximum of 10?
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?
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?
9. At what point should premises be considered to be 'late opening'?
10. We would welcome your views on the types of conditions that might be imposed.
11. We would welcome your views on whether there should be closer co-operation between the planning and licensing regimes at local level.
12. Do you agree that we should seek to impose some controls on occasional permissions for voluntary organisations?
13. What would be the best way to do that?
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?

15. Do you agree that there should be a presumption against 24-hour opening in Scotland with limited exceptions set out in statutory guidance?
16. What limited exceptions should be allowed?
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?
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?
19. Is a radius of 4 metres sufficient to define those neighbours entitled to receive written notice or should this be wider?
20. Do you agree that Liquor Licensing Standards Officers should be employed by local authorities rather than by Licensing Boards?
21. Do you have further views on how a tiered complaints system should work and what the range of sanctions should be?
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?
23. Do you agree that Board members should be obliged to undertake their mandatory training within 3 months of elections before sitting?
24. Do you agree that personal licence holders should be obliged to undertake refresher training every 5 years?
25. Do you agree that all permanent members of staff who are serving alcohol should receive appropriate mandatory training to an agreed 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'?
27. How should 'casual' be defined? Would a period of 2 or 3 months be appropriate?
28. Should the designated personal licence holder be placed under a duty to ensure that training of permanent staff is carried out?
29. How can this best be monitored?

The Licensing (Scotland) Bill

A Consultation on Liquor Licensing

30. Do you agree that the issue of irresponsible promotions is best tackled at a national level?
31. Do you have any views on how an 'irresponsible promotion' can best be defined?
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?
33. Do you support a no-proof no-sale approach for Scotland, extended to all licensed premises?
34. What conditions should be attached to the premises licence to recognise the special character of clubs?
35. Do you agree that the bar manager or steward should be the designated personal licence holder?
36. Are there any very small clubs which should be exempt from the personal licence requirements?
37. Do you agree that a retention fee for premises licences should be charged?
38. How can this best be done?
39. Do you agree that every premises applying for a licence should display a pro-forma A3 notice for 21 days.
40. How can we make Board hearings less intimidating?
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.
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?
43. Should passenger ships and boats be included in the licensing system where journeys are between points in Scotland?
44. Do you agree that wholesalers should be brought within the licensing system?
45. Should those who run mail order, telephone and Internet alcohol sales businesses be required to hold a personal licence?
46. Should their storage premises be required to have a premises licence?

Consultation Arrangements

Copies of this paper can be downloaded from our website at www.scotland.gov.uk. Requests for this paper in different formats and languages will be considered. We are asking for your views on a range of questions contained in the paper. Comments on the proposals set out in the paper can be made:

by e-mail to liquor.licensing@scotland.gsi.gov.uk

in writing to Ann Oxley
Scottish Executive Justice Department
Civil Justice Division
Licensing Branch
2 West Rear
St Andrew's House
Edinburgh
EH1 3DG

Comments by e-mail would be preferred. A full list of the questions is also contained in the paper, and each question is highlighted in the appropriate section of the text. It would be helpful if, in responding, comments could be cross-referred to the question numbers in the paper. If you would like your response to be treated as confidential, please indicate this clearly as all responses will otherwise be available for public scrutiny at the Scottish Executive's library at Saughton House and on our website. Responses from those who reply in confidence will only be included in numerical totals, and names and text will not appear in the list of respondents or in any published analysis.

We will produce a digest of the consultation responses and an analysis of their content.

We invite individuals and organisations to submit views and comments by 31 August 2004.

Annex A

Issues for Consideration by Expert Reference Group

- Irresponsible Promotions: defining it and finding a workable national approach
- Use of Statutory Ministerial guidance
- Licences:
 - Standard National Licence Conditions
 - Licence Transfers and Variations and Provisional Grant of Licences
 - Approach to Premises Licences for Registered Clubs
- Sanctions and Penalties
- Liquor Licensing Standards Officers – governance issues
- Procedural Issues for Boards dealing with Licence Applications, Revocations and Suspensions, eg notice requirements, timescales
- Fee Review.

A number of issues which require further work would be for consideration by the National Licensing Forum including:

- Overprovision
- Exceptions to 24-hr opening
- Training
- Role and job description of Liquor Licensing Standards Officer
- Reducing intimidation at Board hearings.

© Crown copyright 2004

Astron B35262 5/04

ISBN 0-7559-4198-5



9 780755 941988

w w w . s c o t l a n d . g o v . u k