

Scottish Government Consultation: Further Options on Alcohol

Response from the Scottish Grocers Federation

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CONSULTATION QUESTIONS

1. Are you responding as an;

- (a) individual
- (b) on-trade business
- (c) off-trade business
- (d) members' club
- (e) local authority
- (f) another business or organisation, please specify ✓

The Scottish Grocers Federation is Scotland's trade association for the convenience store sector. We have approximately 2,000 members representing some of Scotland's best known businesses including SPAR Scotland, ScotMid, the Co-Op Scotland, Premier, McColl's, Keystore, Costcutter and Nisa.

The sector provides over 40,000 jobs in Scotland across about 5,300 convenience stores – Scotland has more convenience stores per head of population than any other part of the UK.

We welcome the opportunity to respond to this consultation – issues around the licensing of alcohol are of great importance to our members. However we have several key concerns in relation both the consultation process and the proposals in the consultation paper itself :

- This consultation was launched without any prior discussion with key stakeholders in the off-trade business nor was there any discussion with Key fora such as SGAIP.
- It is clear that single issue groups such as Alcohol Focus Scotland have had some influence on many of the proposals in the consultation paper. We would express some concern about 'policy capture' by these groups.
- We have not been convinced that the majority of the proposals would improve the operation and effectiveness of the licensing regime. The views of the off-trade business – and in particular the Convenience Store Sector – have not been adequately reflected in the proposals.

We would be very happy to discuss these issue with you in more detail.

Proposal 1 Criminalise supplying alcohol to a person under 18 for consumption a public place.

Q2. Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?

Yes

Responsible retailers have worked extremely hard to fully integrate proof of age schemes into their business operations and are fully committed to the resources required to training staff and making these schemes effective. However, it is vital anyone making an under-age purchase is prosecuted to the full extent of the law.

We understand the aim of not criminalising young people, but we have reached the position where there is little else responsible retailers can realistically do and there must now be an equal focus on those who deliberately seek to break the law, particularly those guilty of proxy purchasing.

Similarly if it becomes illegal to supply alcohol to under-18s, as the Scottish Government is now proposing, those found guilty of an offence must suffer the consequences.

Q3. Are there specific circumstances in which this should not be illegal?

We would welcome clarity regarding the proposal: is it the intention to potentially criminalise parents who may supply their children with alcohol at family gatherings in public places (e.g. picnics, barbecues) or at entertainment events.

Proposal 2 Give the police powers to impose restrictions on licensed premises, both the on and off trade, within an area where disorder is likely to occur

Q4. Does section 97 form a suitable basis on which to provide extended police power?

No

SGF is opposed to this proposal. Given the existing police power to close individual premises under section 97, we are not convinced that extending these powers would be necessary or beneficial. The proposed measure could result in the majority of responsible retailers in an area being penalised for the misconduct of the very few who act irresponsibly.

There are key issues to be addressed about how 'an area' would be defined and premises managers would have to be contacted individually and with sufficient advanced warning. Similarly much clarity is needed on the threshold of evidence the police would be required to demonstrate to invoke this new power.

Q5. Should the procedure under section 97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?

As stated at question 4, SGF is opposed to this proposal. However, if such a new power were to be introduced we believe it would be appropriate for the police to apply to a sheriff, as the power being requested – to close all licensed premises in an area – is much wider than is currently available and would have a greater impact on retailers.

Q6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors' boxes/corporate hospitality, etc.?

No comments.

Proposal 3 - Boards should be able to impose additional conditions to apply variations to opening hours for some or all licensed premises to restrict the sale of alcohol around football matches or other events likely to be associated with disorder

Q7. Should Boards be able to impose additional conditions to apply variations to opening hours, for some or all licensed premises, to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?

No

SGF is opposed to this proposal: we believe it is unnecessary, inflexible and would have a significant detrimental effect on local retail businesses.

Q8. Do you have concerns about this proposal, and if so, what are they?

The consultation paper itself notes that it would be exceedingly difficult to devise a condition that served the intended purpose without being unduly onerous and that once a condition was imposed it could not be easily changed or relaxed. As such this proposal seems inherently flawed to the extent that it could be asked why it has been included at all. Any further restrictions on retailers will simply disadvantage them and their customers.

Proposal 4: Enable Licensing Boards to apply new local licensing conditions to all existing licensed premises without the need to update individual licences.

Q9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?

No

SGF is opposed to this proposal. We have strong concerns over this proposal due to the potential to significantly increase regulatory and financial burdens on retail businesses – there is simply not enough detail as to what new conditions could be imposed; would the new conditions include, for example, staff training, security measures, the range of products allowed in stores?

Additionally, as licence holders can be punished for a breach of conditions, it is only fair that all individual licence holders are informed of any new conditions and have the right to appeal them. Indeed this proposal could lead to an increased amount of appeals – creating even more backlogs in the system and adding to the already considerable costs to retailers.

Licence holder are required to display information on their licence at all times in their premises – this information must be up to date and show relevant conditions to the licences. As such any new conditions would have to be quickly and effectively communicated to the premises.

Q10. What procedures should apply before such conditions are applied and what rights of appeal would be appropriate?

As stated at question 9, we are opposed to this proposal and believe that such powers should not be granted.

Proposal 5 Allow Boards to consider whether an applicant is a ‘fit and proper’ person to hold a licence

Q11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a ‘fit and proper’ person?

We cannot support this proposal at the moment: it is too vague and indiscriminate due to lack of detail in what may be defined as ‘fit and proper’. Additionally:

1. The test is also unnecessary given the current requirements of the personal license application process.
2. Potential applicants need to know what issues, convictions or penalties may be considered before investing time and money in the application procedure.
3. Without a clear definition, the power could be widely mis-used for local political considerations (such as to tackle issues of over-provision etc).
4. If introduced, any definition of fit and proper should be restricted to the activities of the individual/s concerned, and should relate directly to their ability to hold a licence.

Q12. Should there be a definition of ‘fit and proper’ and if so, what should it consist of?

If introduced, any definition should be clearly set out, ideally at a national level to ensure consistency for retailers trading across local authority areas.

Proposal 6 Place a statutory obligation on Licensing Boards to promote the licensing objectives

Q13. Should Boards be placed under a statutory obligation to promote the licensing objectives?

No

SGF is opposed to this proposal. We do not see what benefits this would bring and fear it might distract Boards from their primary day-to-day duties, therefore question whether it is necessary – surely Boards are already promoting the objectives as an integral part of their function. More top-down regulation is not required – this could be a step towards a national licensing policy, potentially driven by the public health agenda as much as it is by local licensing related issues. This proposal ignores the function of the local Licensing Forum (as does the consultation in general) – the Forum should have a key role in advising the Board about the licensing objectives. Overall the relationship between Boards and Fora should be strengthened.

Q14. What impact would this have on the work of Boards?

1. The objectives already form the basis for Board decisions and are promoted in licensing policy statements.
2. How would this be defined, would every decision have to demonstrate support for all objectives, or would a Board simply have to demonstrate that its overall work was promoting them? If the former, this is likely to be unworkable (i.e. how would approving a license application be protecting and improving public health?). If the latter, this is unlikely to change how Boards operate in practice, therefore appears unnecessary.

Proposal 7 Boards be put under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives.

Q15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?

No

SGF opposes this proposal. The proposal appears unnecessary and would create more administrative and financial burdens for Boards and would detract from a Board's primary purpose.

As we understand it, while not a statutory obligation, Licensing Boards already provide annual statistics to Scottish Government. In addition, local Licensing Forums are already able to ask for information and statistical data on the Board's functions.

16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?

No comments

Proposal 8 Place a statutory duty on Licensing Boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy.

Q17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?

No

We do not see what benefits the proposal would bring, therefore we question whether it is necessary. Additionally:

1. The proposal would add significant burdens in terms of costs, time and administration for Boards, which could distract or reduce their ability to perform their primary purpose.
2. There is a danger that the information collected will not be used for proportionate, balance and objective decisions but could potentially mis-used by pressure groups to strengthen their objections to new licences.
3. As highlighted above, Boards are already providing data and local Licensing Forums are already able to ask for information and statistical data on the Board's functions. This seems to be an adequate way to ensure relevant data is collected and shared

Q18. What benefits would such a statutory duty bring?

Please see above

Proposal 9 Extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period.

Q19. Should the period that a statement of licensing policy is in force be extended to five years?

SGF is willing to give qualified support to this proposal - the development of the policy must still be subject to full consultation and be evidence-based. Additionally we would not support the extension to five years if a statutory ouster clause was adopted.

Q20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?

No

The policy should be open to challenge throughout its term. Once a policy is in force different views on how it should be interpreted and implemented can emerge. A policy could be interpreted in a way that a retailer could not have foreseen when the policy was introduced. Typically appeals only arise when the interpretation of a policy is enforced. We would not therefore support a proposal which would prevent appeal against unforeseen use of powers.

Proposal 10 Measures to ensure that licence holders have a reasonable command of English.

Q21. Is there currently an issue with licence holders who do not have a reasonable command of English?

No

We are not aware of any serious or urgent issues surrounding licence holders who do not have a reasonable command of English.

Q22. If there is a problem, what would be your preferred means to address this?

We would not support any mandatory condition for someone with a reasonable command of English to be present on the premises at all times.

Proposal 11 Address the uncertainties highlighted by the Brightcrew decision

Q23. Would expanding the scope of the Act from 'sale' to 'sale and supply' address the uncertainties created by Brightcrew?

No

SGF believes that the essential function of Licensing Boards is to licence and regulate the sale of alcohol rather than make decisions and intervene on the basis of wider concerns relating to the suitability or ethics of specific businesses. To do so is going beyond their essential function.

Licensing Boards are not (and should not become) the moral guardians of the community. Additionally there are other regulatory bodies that have responsibility for and greater expertise in, areas such as health and safety, employment law and gaming. Licensing Boards should not duplicate these functions.

24. Would placing a general duty on Boards to 'promote' rather than 'have regard' to the licensing conditions address the uncertainties created by Brightcrew?

No

Please see above

Q25. Would making clear that the Act allows regulation of the sale of alcohol *or other activities* in the licensed premises within licensed hours address the uncertainties created by Brightcrew?

No

Again, there are a number of different enforcement bodies responsible and accountable for regulating different aspects of business; gaming, environmental health, food safety and hygiene, workplace safety and employment law. Licensing Boards should not duplicate or encroach on any of these other areas of responsibility.

Q26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?

SGF believes that the Scottish Government should strongly re-iterate that the essential function of Licensing Boards is to licence alcohol sales, not to intervene in different aspects of trade which are covered by other regulatory and enforcement bodies.

Q27. Do you agree that there should be additional restrictions on the operation of members' clubs?

No Comments

28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence?

No Comments

29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?

No Comments

30. Do you have any other proposals to tighten up the regulation of members' clubs, for example through additional mandatory conditions?

No Comments

Proposal 13 Address concerns about procedures at Licensing Board hearings.

Q31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?

Yes

SGF has members who operate across all of Scotland's 32 local authorities and have stores in every single postcode area in Scotland. Currently there are wide variations and inconsistencies in how each Licensing Board operate - the degree of formality, how written and oral evidence is taken and considered, and how decisions are made. Neither the 2005 Act nor guidance currently gives direction in respect of how hearings should be conducted.

These variations and inconsistencies in hearings are a major cause of concern for our members.

Additional guidance or regulation for Licensing Boards from the Scottish Government would help to address these issues and would help ensure greater consistency in how all Licensing Boards operate. This would help retailers and also the new single Scottish police force. This would provide greater clarity to both the Boards and the communities they serve. Ideally, any changes should be introduced in regulation, rather than guidance, to ensure these are adopted and implemented consistently throughout Scotland.

One particular area which would benefit from more clarity: any new regulation should stipulate a fair minimum time limit for notification of hearings – we would suggest 4 weeks - in order to ensure defendants are given adequate time to prepare their case and provide the necessary documentation (we have reports that some applicants have been given as little as 1 week notice). It is vital, for example, that a retailer can effectively demonstrate due diligence at a hearing. This is becoming increasingly complex and time consuming and adequate time to prepare their case.

Q32. Can you provide examples of particularly good or bad practice at Board hearings?

No Comments

Q33. Should Board meetings be held in public, in their entirety?

No Comments

Q34. What other issues should be considered for inclusion in any guidance on Board procedures and why?

The means of notification of hearings and timelines within which applications must be considered and granted/refused.

Proposal 14 Develop a national licensing policy statement that local Licensing Boards are required to have regard to when drawing up their own policies.

Q35. Should the Scottish Government introduce a national licensing policy statement and why?

SGF is not opposed to this proposal but at the moment there is simply not enough detail provided for us to give our full support. We need consistency and a national policy could help to ensure consistent approaches across Licensing Boards. However, and as the consultation itself recognises, any national statement would have to be at a very high level due to the 'very wide variations between the different Scottish communities' and is likely therefore be at too high a level to have any real impact or relevance.

The phrase contained in the proposal '*have regard to*' is too vague and ambiguous – would Licensing Boards have any statutory duties in relation to a potential national licensing policy?

Q36. What sort of issues should such a statement cover?

No further comments please see above.

Proposal 15 Amend the licensing objective in the 2005 Act from “protect children from harm” to state “children and young persons from harm”.

Q37. Should the licensing objective be amended to say “protect children and young people”?

Yes

SGF supports the proposal that the current licensing objectives should be amended to include 16 and 17 year olds. However, there should be absolute clarity on the definition of a 'young person'. Increasingly, for example, in services provided for 'young people' in Scotland a young person is considered to be someone between 16 and 25.

It would not be appropriate for the licensing objective to consider the potential impact on anyone over the age of 18 who is legally entitled to purchase alcohol.

Q38. Does the current mandatory condition in relation to Challenge 25 create difficulties?

Yes

The current mandatory condition creates an anomaly where the law may have been broken in selling alcohol to a 17 year old, but the licensing objective has not.

16 - Address concerns that legislation intended to require notification of those connected to a premises licence, was too broadly drafted and would inadvertently criminalise many premises licence holders.

Q39. Do you agree that the duty as presently drafted is unworkable and why?

We cannot say definitely that the current duty is unworkable. However, there are clearly issued which need to be addressed particularly if, as the consultation paper states, the provision on interested parties in section 184 of the 2010 Act has never been brought into law.

Q40. (a) Do you prefer the proposal that the duty should be amended to read that
‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change.....’

(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982

whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

(c) Alternatively do you have any other suggestions?

The responsibilities of a premises licence holder must be clear and proportionate. On balance we would favour option a, assuming that clear guidance is provided on ‘reasonably expected to be aware.

Q41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees?

No, we are not convinced that a premises manager should have vicarious liability for the offences of employees. This would put a disproportionate and unrealistic burden of responsibility on individuals; human error will occur regardless of the systems and procedures put in place to ensure compliance with regulations.

Proposal 17 Amend section 7 of the 2005 Act, the duty to assess overprovision, to state that the locality for assessment of overprovision can be the entire board area.

Q42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?

No

SGF opposes the proposal to amend section 7 of the 2005 Act. The assessment of overprovision should be a tool to help address local issues where a problem with alcohol related crime and disorder, or health harms, is identified. Moving the overall evidence-base and approach away from addressing specific local issues to a focus on the entire Board area is likely to dilute the impact and effectiveness of any measures aimed at addressing these specific local issues.

Overprovision takes no account of the nature of a business and the services it provides. For example, Edinburgh has 449 restaurants, 428 bars/pubs but only 243 licensed convenience stores. Overprovision restricts business development and job creation in business sectors where no genuine overprovision exists.

It is important to note that no causal link has been established between the number of licences in a locality and alcohol-related health problems. Nor is it possible to demonstrate in most cases that harm is caused by alcohol purchases within the local area. Indeed this is acknowledged within the consultation paper itself – ‘it is very difficult, if not impossible in most cases, to make a causal link between where alcohol is sold and where it is consumed.’

Q43. Would this make it easier for Boards to assess overprovision?

No further comment, please see above.

Proposal 18 Clarify that overprovision can include an increase in capacity where there is no increase in the number of premises, and include opening hours in the assessment of overprovision.

Q44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?

No

SGF opposes the proposal to amend section 7 of the 2005 Act in relation to an increase in capacity. We acknowledge that under current overprovision guidelines licensees can increase the capacity of their premises. Capacity in this sense would either be the number of individuals the premises can contain in the on-trade, or the size of the alcohol sales area in the on-trade. However in practice such increases would not dramatically increase the amount of alcohol being sold. It would be a paradox if a 20m² increase in selling area of a convenience store was counted as just as big a threat to an overprovision assessment as a new out-of-town hypermarket. Yet under this proposal each would be subject to exactly the same sort of scrutiny. Retailers frequently remerchandise and refit stores to best meet consumer needs. Most of the time these will just involve 'micro-space': keeping the existing shelving and general space splits but moving products around on the shelves. Sometimes, however, to meet consumer demand, to fit in with new brand ideas or to roll out improved formats 'macro-space' revisions are necessary. These may involve changing old shelves for new, increasing or decreasing the splits in store space between different categories, or gutting and refitting the store entirely. Extensions to the selling area might be necessary under macro-space refits.

Creating a general presumption that no increase in alcohol capacity would be approved in certain areas would almost certainly mean that existing retailers would not invest in modernising and refitting stores in those areas. This will create negative impressions of those areas, as the existing stores become tired and shabby. As alcohol-related health harms or crimes are predominantly associated with poorer areas it is most likely that it is poorer areas will be covered by overprovision assessments. It would be a shame if they were deprived of modernised or newly-refitted retail opportunities.

Similarly, an extension of trading hours would in general only be likely to marginally increase alcohol provision. Even then an increase in the hours within which alcohol can be purchased would not necessarily mean that more alcohol would be consumed. Just as importantly we feel that it should be noted that the hours in which alcohol can be sold are already restricted by laws and licence conditions.

Proposal 19 Address internet sales by extending the Scottish measures such as the multi-buy promotions ban to cover orders dispatched from England but which were 'taken' in Scotland.

Q45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?

We are not convinced as to how this could be made to work in practice.

Q46. If this were introduced, would it be possible for the police and local authorities to be able to carry out meaningful compliance and enforcement action?

Please see above,

Proposal 20 Clarify the specific circumstances under which alcohol can be sold in garage forecourts.

Q47. Should all garages be refused a premises licence?

No

SGF believes that there should be no prescription against garages holding premises licences - the presumption against garages obtaining licences should be brought to an end. There is little real difference between a local garage which sells alcohol and a large supermarket (with a large car park) which sells alcohol. With most people now driving to shop, the restriction on garages is increasingly seen as unnecessary.

There is no link between the purchase of fuel (or visits to a garage forecourt for whatever reason) and the purchase/consumption of alcohol. The key issue is that alcohol is sold from forecourts in a responsible manner, complying with the required conditions and regulations.

Q48. What, if any exemptions should apply?

The most effective way to address these issues is to entirely remove the regulations surrounding alcohol sales at garages,

Q49. Can you suggest an alternative approach which would address concerns?

Please see above.

Proposal 21 Timing of Board training/Flexibility over training requirements for a new Board.

Q50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the Local Government elections?

No

51. If so, what would be your preferred approach to address this issue of alcohol licensing?

Introduce flexible and practical approaches to Board training. For example,:

1. Allow board members a 3 month grace period to comply with training;
2. Authorise clerks and deputies to grant non-contentious new licences and major variations during the 3 month period, with an option for those decisions to be ratified by the board at the end of the 3 month period.

52. Do you have further suggestions for reform?

In the short-to-medium term a halt to any further reforms would be beneficial.

Further options for alcohol licensing – consultation paper

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

- (a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c)** The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?

Please tick as appropriate Yes

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes