



## **Local Government and Transport Committee's Stage 1 Report On Licensing (Scotland) Bill**

### **Industry Response**

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#### **About the Scottish Beer and Pub Association (SBPA)**

The Scottish Beer and Pub Association was originally formed in 1906. Its members are Scotland's brewing and large pub companies representing the licensed trade industry in Scotland. The main aim of the Association is to contribute to the economic and social wellbeing of Scotland through employment, investment and training.

The Scottish Beer and Pub Association's members include Scottish Brewers Ltd, Tennent Caledonian Breweries Ltd, Carlsberg U.K. (Scotland) Ltd, Belhaven Group plc, The Caledonian Brewing Company, Diageo Ltd, Broughton Ales, Scottish and Newcastle Pub Enterprises, The Spirit Group, Mitchells and Butlers, Enterprise Inns, Punch Taverns & Maclay Group.

Our parent association is the British Beer and Pub Association (BBPA). Our members account for 1,500 of the 5,200 licensed public houses in Scotland.

#### **SBPA and Licensing Reform in Scotland**

The SBPA, has been closely involved with the process of licensing reform in Scotland since the creation of the Nicholson Committee by the Scottish Executive's then Justice Minister, Rt Hon Jim Wallace MSP, in May 2001.

Our former Chief Executive, Gordon Millar, served on the Nicholson Committee and was fully supportive of the final unanimous conclusions of the Nicholson Committee.

SBPA as an organisation has supported the Nicholson Committee's recommendations, which we believed offered a consensus for progress on which the industry, licensing boards, the police and health bodies could agree. We agreed with the Nicholson proposals as a package and believe that their widespread support is recognised by the fact the most of the suggestions made by the Nicholson Committee are reflected in the Licensing (Scotland) Bill.

SBPA has also served on the Expert Reference Group (ERG) which was established by the Scottish Executive to advise it on the procedural aspects of the licensing reform process. SBPA has played an active and constructive role in the Scottish Executive's consultations on licensing reform and welcomes the opportunity to continue with that involvement through the Scottish Parliament's deliberations on the Licensing (Scotland) Bill.

**In general terms the Scottish Beer and Pub Association welcomes the conclusions of the Local Government Committee in relation to the Licensing (Scotland) Bill. However, on some issues we disagree with the conclusions of the Committee and these are covered in the enclosed response.**

SBPA would endorse the content of clauses 1 to 4.

### **Licensing boards**

SBPA endorses the content of clauses 5 and 6.

### **Size, composition and quorum**

In relation to clause 7, SBPA would express its concern at any suggestion of increasing the size of Licensing Boards beyond the current numbers of members. We do not believe that having larger Licensing Boards will necessarily improve their efficiency or operation, nor lead to better decision making. We would point to the fact that the Nicholson Committee said:

*“We have come to the conclusion that there is a sound case for reducing the size of licensing boards, and for reducing the number who should sit in public for the determination of applications and other matters. Apart from meeting the problems which we have noted above such a course would also, we believe, make it easier and more practicable for those board members who are to participate in public hearings to be given appropriate training. We deal with that topic in the following paragraphs of this chapter. The precise number of members who should constitute a full board, and the number who should sit at any one time, may be open to some debate. However, it is our view that a full board in a council area which has not been divided into licensing divisions should comprise a maximum of 15 members, and that the full board for a licensing division should comprise a maximum of 10 members.”*

In relation to clause 8 we would endorse the Committee’s concerns. Similarly in relation to clauses 9 and 10, although we believe for the sake of consistency within licensing board areas there should be a limit on the “divisionalisation” that can take place within Boards believing that this concept taken to extremes could undermine much of the proposed “modernisation” of the operation of Boards.

### **Licensing Standards Officers (LSOs)**

SBPA would endorse the Committee’s comments in clauses 11 to 16. In relation to clause 17 and the costs arising to the licensed trade of the operation of LSOs we fully support the Committee’s recommendation that: *“the Executive, in consultation with local government and the licensed trade, should examine closely how best to ensure that any additional financial burdens on the licensed trade are kept to a minimum.”*

### **Role of the Police**

SBPA endorses the content of clauses 18 and 19. In relation to clause 20 we are fully supportive of the Committee’s encouragement of the creation of a national database of personal licence holders. We believe this development would be the most effective method of operating the personal licence holder regime and believe that the costs of introducing it would be less than the costs of operating 32 separate licensing systems.

SBPA notes the Committee’s comments in clause 21, but has no comment to make.

## **National Licensing Forum**

SBPA would fully endorse the Committee's comments in clauses 22 and 23.

SBPA would draw to the attention of members of the Committee its major concern that the National Licensing Forum as currently constituted does not adequately represent the concerns of the on licensed trade and as such would ask the Committee to act on its comments in clause 24 that: *"On receipt of the progress report from the Deputy Minister on the role and composition of the National Licensing Forum, the Committee will consider, at that time, whether it wishes to take further evidence from the Minister."* We believe the Committee should take further evidence from the Minister on this issue.

## **Local licensing forums**

SBPA would endorse the Committee's comments in clauses 25 to 27, and welcomes the fact that the Executive has agreed to increase the proposed number of members on any Forum to fifteen. We would also ask that representation from the licensed trade on any Licensing Forum is representative of the on-licensed trade, given its diversity.

## **Licences: general points**

### ***Single premises licence***

SBPA would endorse the Committee's comments in clauses 28 and 29.

### ***Excluded premises: garages and petrol stations***

SBPA notes the Committee's comments in clause 30 and has no comment to make.

### ***Vessels, vehicles and moveable structures***

SBPA notes the Committee's comments in clause 31 and has no comment to make.

### ***Vehicles hired for entertainment purposes***

SBPA notes the Committee's comments in clause 32 and has no comment to make.

## ***Appeals***

SBPA endorses the Committee's comments on clause 33.

## ***Occasional licences***

SBPA notes the Committee's comments in clause 2 34 and 35, and has no comment to make.

## ***Investment in areas surrounding licensed premises***

SBPA notes the Committee's comments in clause 36 that: *"The Committee therefore calls on the Executive to consider whether there are practical ways in which licensees may be required to contribute to increased policing and cleansing costs and to invest in outside infrastructure improvements like CCTV."*

Our view is that any conditions imposed on a licence holder in relation to the operation of their premises should be appropriate and commensurate with any issues arising from the operation of those premises. The Licensing Bill already gives local Licensing Boards the powers to impose these conditions where appropriate and we would be concerned if this

became a general provision rather than a specific one. We would point to the fact that licensed premises across the UK already pay £22 billion in duties, business taxes and rates to the government, and we would be opposed to any moves to increase their costs further.

We would also point to the fact that the Executive over the last several years has been progressing towards the introduction of Business Improvement Districts in Scotland which is already seeking to address this issue across all property owners and not specifically operators of licensed premises.

## **Licences: Administrative arrangements**

### ***Open ended licences***

We note the Committee's comments in clause 37, and accept that this matter should be reviewed and monitored by the National Licensing Forum. We also accept the need for the public to be informed about their rights under the new regime. We would however suggest this would best be achieved at a local level rather than by some form of national activity.

### ***Objections***

We note the Committee's comments in clause 38 and would repeat our concern that the proposal to allow anyone the right to object to a licence application is too wide and will introduced financial costs into the licensing regime which will be borne by the licensed trade without good reason. Although Boards can recoup costs from those lodging "vexatious or frivolous objections," in practical terms there will still inevitably be unnecessary additional costs for Boards and applicants will bear additional legal costs. Given that it is their livelihood, it is clear that any applicant or licensee will employ legal advice as early as possible in dealing with any objections or complaints and this will add to their costs. We believe that the restricting the right of objection to those with a "direct and material interest" as defined by the Daniels Committee would be adequate and still lead to a broadening of the involvement of the public as objectors in the licensing regime.

### ***Appeal rights for objectors***

We note the Committee's comments in clause 39 and its suggestion that a de facto third party right of appeal for objectors to a licensing application which is granted by a Licensing Board. We are totally opposed to the creation of such a right, given that objectors have the opportunity to make their case at a local Licensing Board, and have a broadened role within the licensing system itself. Granting this additional right would further add to the costs of the licensing regime in Scotland, impacting on investment and delaying the opening of new premises where objectors sought to mount legal action against an application which had been approved.

We note that the Scottish Executive has recently ruled out the creation of a third party right of appeal for objectors to planning applications and we cannot see how introducing one in the context of the licensing system is consistent with this approach on planning. As the Communities' Minister Malcolm Chisholm said in launching the Executive's proposals for reforming the planning system: "In light of the proposals to ensure more fairness, balance and greater involvement in the planning system, our white paper does not propose a third party right of appeal." We would argue a similar situation applies in relation to the Licensing Bill.

### ***Local authorities holding licences: questions in relation to the European Convention on Human Rights (ECHR)***

We note the Committee's comments in clause 40, and have no comment to make.

### ***Fees regime***

SBPA would endorse the Committee's comments in clause 41.

We note the Committee's comments in clause 42. However, we would be totally opposed to the Committee's suggestion of allowing "flexibility" for local Licensing Boards to decide their own fees. We believe that there should be a nationally set fee structure which would apply across Scotland and which would reimburse individual licensing boards the costs of their operation.

SBPA would endorse the Committee's comments in clause 43, but would suggest that any new banding structure for fees need not of itself be so onerous as to cause financial hardship to premises which have "*a high rateable value but containing only a very small licensed bar.*" We would point to the fact that the fee structure under the new licensing regime in England and Wales has introduced a "fee multiplier" for the fees payable by applicants operating in properties with higher rateable values where their primary form of trading is the sale of alcohol, meaning that hotels and other non-public house licensed premises pay proportionately less. We feel incorporating this into the fee regime in Scotland would address the Committee's concern on this point.

SBPA would endorse the Committee's comments in clauses 44 and 45.

### **Opening hours**

#### ***Ending of 'permitted hours'***

SBPA would fully endorse the Committee's comments in clause 46.

#### ***Occasional extensions***

SBPA would endorse the Committee's comments in clauses 47 and 48.

#### ***Presumption against 24 hour drinking***

SBPA notes the Committee's comments in clauses 49 to 51. Whilst it is difficult for us to envision a situation in which a licensee would seek to open for 24 hours, we believe that it is consistent with the principles of the Licensing Bill and the ending of the permitted hours approach to licensing hours that it should be left to local licensing boards to make these judgements.

We believe that the presumption against 24-hour opening was introduced by the Executive to stop the possibility of a premise being permanently open, not necessarily to stop a premises having the opportunity to make this case for these hours. In line with this we believe that a presumption against 24-hour opening is adequate to deal with this issue.

### **Premises operational issues**

#### ***Children***

SBPA notes the Committee's comments in clause 52, and expresses its disappointment that the Committee did not feel it could endorse an opt-out approach for allowing access to licensed premises by children with supervision. We would argue that if the Committee does not feel it can support this opt-out approach as advocated by the trade it is somewhat contradictory for the Committee to then continue to clause 53 where it

*“recommends that the Executive should consider whether it can do more to encourage licensed premises, where appropriate, to become more ‘family friendly’ with appropriate facilities for children and families. The Committee considers that encouraging such a culture change should be a role for the National Licensing Forum, who could produce national guidelines for licensed premises seeking to adopt a ‘family friendly’ policy. The Committee also considers that Ministers should ask the National Licensing Forum to review the progress being made by licensed premises towards implementing such policies 5 years after the enactment of the Bill and consider what further action might be required.”*

### **Use of reasonable force**

SBPA notes the Committee’s comments in clause 54 and would highlight the fact in response to clause 55, that the Security Industry Authority’s remit has now been extended to Scotland and that it will issue the first licences to door stewards in Scotland by late 2006.

### **Training**

SBPA endorses the Committee’s comments in clause 56.

### **Transitional arrangements and grandfather rights**

SBPA would endorse the Committee’s comments in clause 57, however we would respectfully suggest that these comments are to a certain extent contradicted by comments in subsequent paragraphs, for example, the Committee suggests “not to have the licensing boards operating two systems for any longer than is necessary.” There is no suggestion that two systems would be operating at the same time. This would be addressed by having an appointed date when all new licences and conditions would come into effect.

In relation to the contents of clause 58 we have made detailed representations on the transitional process, but would broadly endorse the Committee’s view.

In relation to clause 59 however, we would point out that under the current regime licensing boards have sought to have licensees adapt their buildings to comply with modern building standards, but that they have also largely accepted where this is not possible because of the physical characteristics or nature of the buildings, that these premises should be allowed to continue trading. We are concerned at the implication in the Committee’s comments, “*with an understanding that all licensed premises will have to comply with current building standards,*” and “*wished to continue trading there at the end of the interim period*” that premises could be closed when this has never been an option fully used by licensing boards up until this point. We would therefore which to strongly dissent from the Committee’s comments on this issue and ask that the Committee does not proceed on this point with amendments to the Bill.

### **Overprovision**

SBPA endorses the Committee’s comments in clauses 60 to 63.

### **Irresponsible drinks promotions**

#### ***Differential pricing policy***

SBPA endorses the Committee’s comments in clause 64 and notes that the Executive has proposed increasing the period of price maintenance to seventy two hours.

### ***Promotions in the off-sales trade***

SBPA endorses the Committee's comments in clauses 65 to 70 and note that the Executive has proposed extending some of the categories of restricted promotions to the off trade also. However, we remain concerned that the proposals too prescriptive given that promotional activity is a legitimate tool for promoting new products, as distinct from selling existing products more cheaply, especially where discounted drinks are sold with meals for example.

We would suggest that instead the Committee give Licensing Boards the legal powers to use existing industry best practice, like the British Beer and Pub Association's Code of Practice on Drinks Promotions, to enforce standards in relation to drinks promotions, and to prohibit "irresponsible" drinks' promotions, rather than adopting the prescriptive list approach as currently used in the wording of the Bill.

### ***Delivery of alcohol***

We note the Committee's comments in clause 71, and have no comment to make.

### ***Advertising and labelling***

We note the Committee's comments in clauses 72 and 73, and would highlight the fact that recent research by the BBPA suggests that "17 major British brewers will have unit labelling as standard on their beers by the end of 2005. As a result, 85 per cent of the beer sold in cans and bottles in the UK will be unit labelled. By this point, 84 per cent of bottles and cans will also carry a message encouraging people to drink responsibly."

### ***Test purchasing of alcohol by persons under 18***

SBPA endorses the Committee's comments in clause 74.

### **Miscellaneous matters**

#### ***Report of the Subordinate Legislation Committee***

We note the Committee's comments in clause 75, and have no comment to make.

#### ***Financial Memorandum***

We note the Committee's comments in clauses 76 and 77, and would endorse the Committee's concerns.

### **Overall conclusions**

We note the Committee's comments in clauses 78 and 80.