



**Evidence Submission to  
The Scottish Parliament's  
Local Government and Transport Committee  
Licensing (Scotland) Bill**

**April 2005**

## **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 Ltd, Diageo Ltd, Broughton Ales, Scottish and Newcastle Pub Enterprises, The Spirit Group, Mitchells and Butlers, Punch Taverns, Enterprise Inns & Maclay Group.

Our parent association is the British Beer and Pub Association (BBPA). Our members account for 1,500 of the 5,100 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, with the exception of two minor issues on which he dissented.

SBPA as an organisation has supported the Nicholson Committee's recommendations, which we believed offered a consensus for progress on which the industry, including the Scottish Licensed Trade Association (SLTA), 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 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.

## Introduction

1. SBPA is fully supportive of the intentions and generally of the content of the draft Licensing (Scotland) Bill. Our response restricts itself to only commenting on those areas where we believe our members have concerns about the drafting and/or implementation of the Bill.
2. We remain supportive and committed to the implementation of the recommendations of the Nicholson Committee, particularly as they relate to: the introduction of premises and personal licences; consolidation of the current seven types of premises licences into one; and the abolition of the current permitted hours approach to licensing of premises, which we believe has clearly outlived its usefulness given that 92% of all public houses and 87% of hotels have regular extensions in their hours.
3. We welcome and support the Scottish Executive's comments as stated in the Financial Memorandum accompanying the Bill, at Section 301, that "The Executive recognise that the majority of individuals drink responsibly and want to ensure that social drinking in Scotland can be enjoyed in a safe welcoming environment."
4. However, we must take issue with some of the assertions contained in the Memorandum at Section 303 relating to the Scottish Executive's own research report 'Alcohol Misuse in Scotland Trends and Costs' and the statement that "the cost imposed upon the NHS in Scotland at 2001/02 prices was £95.6 million, and the total cost to Scottish society was estimated to be £1.1 billion."
5. The report itself says of its own cost estimates that "those occurring outwith the Health service should be treated with caution. Much of these are based on findings from research papers taken from the '*Alcohol Misuse in Scotland Trends and Costs*' report, rather than any robust statistics." The NHS costs highlighted in the research paper account for less than 10% of the total costs. On that basis, using the Executive's own disclaimer, the other 90% plus of costs suggested by the paper are not "robust" and should be treated with "caution."
6. As an association, we take very seriously the responsible use of alcohol and its misuse by a small minority of the Scottish public. However we do not believe that the 'Alcohol Misuse in Scotland Trends and Costs' report produced by the Scottish Executive gives an accurate position regarding the health costs and indeed benefits of responsible alcohol consumption. It is established medical fact that moderate alcohol drinking, as practised by the vast majority of the population, produces health benefits.
7. As the Nicholson Committee itself concluded "given that the majority of people in Scotland drink sensibly and responsibly, the licensing system should be as free from restrictions as possible." We believe that this should inform the drafting of the Licensing (Scotland) Bill.

## Issues

### “Division” of Licensing Board Areas

*“Part 2 – Section 5*

*(2) A council whose area is not so divided at that time may subsequently make a determination that their area is to be divided into divisions for the purposes of this Act.”*

- 9. SBPA View: We would be concerned that if too many “divisions” are created by Licensing Boards within their areas then this will make it more difficult to work with clearly defined Board policy and consistency will be lost in terms of licensing decisions, even within local authority areas. Given that the thrust of the licensing reform process was to simplify the bureaucracy of the current system it would seem contradictory to leave the door open to create a preponderance of new “divisional” Boards.**

### Overprovision

*“Part 2 - Section 7 Duty to assess overprovision”*

- 10. SBPA View: We do not support the establishment of a “duty to assess overprovision.” We believe the licensing principles adequately deal with this issue and Board's discretion should not be restricted, as they must have regard to the needs of their community both from a business and from local residents' interests. We understand that the National Licensing Forum will examine the definition of overprovision and we would be concerned that Board's will be obliged to operate a formulaic approach on this issue rather than using their local knowledge.**

- 11. It should be noted that:**

- ?? there are only 14% more licensed public houses now than there were in 1980, which should be compared to an increase of 25% in the number of off licensed premises which now account for 40% of all alcohol sales over that time;**
- ?? there are marginally fewer public house licensed premises now than there were in 1998;**
- ?? much of the turnover of a typical pub is now generated by food sales, which has been a developing position and again restricts the scope for accurately assessing “overprovision” issues around the supply alcohol which is just one part of the offer of the modern pub.**

- 12. Current indications from some of the current Licensing Boards are that they are satisfied they do not have an “overprovision” of licensed premises within their Board areas. Our concern if “overprovision assessments” were implemented and new applicants denied licences that this would restrict the scope for investment within the licensed trade, other than by investors spending additional funds “buying out” existing licences which would then restrict their scope for direct investment in premises and improving the customer experience going forward.**

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## Licensing Forums

*“Part 2 - Section 10 Local Licensing Forums” and “Schedule 2 Membership 2 (1) A Forum is to consist of such number (being not fewer than 5 and not more than 10) of members as the relevant council may determine.”*

- 13. SBPA View:** We are concerned, given that the Bill already identifies five of the groups that should fill the maximum ten spaces on a Licensing Forum, that there will be little scope for the varying perspectives of different types of licensed trade premises to be represented on the Forum. We would compare the situation as outlined in the Bill with existing practice in the Glasgow Licensing Forum that currently has three dozen or so members drawn from a range of interested parties.

## Neighbour Notifications

*“Part 3 - Section 20 Notification of application”*

- 14. SBPA View:** We are supportive of the suggestion that the notification of near neighbours in relation to licence applications should be broadened. However, we note from the Bill and the accompanying Financial Memorandum (Section 327) that there is an intention to increase the radius for this notification to 50 metres. We would oppose this change given that it will impose significant additional costs, especially in urban areas, on local Boards that will assume responsibility for administering this notification system, for marginal benefit in terms of further informing local communities of any application.

## Objections by “Any Person”

*“Part 4 - Section 21 Objections and representations  
Where a premises licence application is made to a Licensing Board, any person may, by notice in writing to the Licensing Board”*

*“Part 4 - Section 34 Application for review of premises licence  
Any person may apply to the appropriate Licensing Board in respect of any licensed premises in relation to which a premises licence has effect for a review of the licence on any of the grounds for review.*

*“Part 4 - Section 55 Objections and representations  
Where an occasional licence application is made to a Licensing Board, any person may by notice in writing to the Licensing Board”*

- 15. SBPA View:** We would suggest that the right of “any person” to lodge objections as defined in the Bill is too wide. 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 that will add to their costs. We would suggest restricting the right for objection to those who can show a “real and material interest” as suggested by the Daniels Committee which helped inform the drafting of the Licensing Bill.

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## Overprovision and the Smoking Ban

*“Section 22 Determination of premises licence application*

*(d) that, having regard to the number and capacity of—  
licensed premises, or  
licensed premises of the same or similar description as the subject premises, in the  
locality in which the subject premises are situated, the Board considers that, if the  
application were to be granted, there would, as a result, be overprovision of licensed  
premises, or licensed premises of that description, in the locality.”*

**16. SBPA View: The Scottish Parliament is currently considering the Smoking, Health and Social Care (Scotland) Bill which, if passed, will introduce a smoking ban in enclosed public spaces in Scotland. It is anticipated that part of the response from the industry will be the creation of external “smoking areas.” If a Board assesses that there is “overprovision” within a particular area then it will be unable to grant provision for new additional floorspace, including external areas, which would be equivalent to an increase in the size of the premises. This risks putting licensees, who could be impacted by the introduction of a smoking ban in enclosed public spaces, out of business and should be viewed as a fundamental contradiction between the Licensing and Smoking, Health and Social Care (Scotland) Bills which needs to be addressed.**

### **Additional National Conditions for “Late Opening” Premises**

*“Part 3 - Section 25 Conditions of premises licence*

*The Scottish Ministers may by regulations modify schedule 3 so as—  
to add such further conditions as they consider necessary or expedient for the  
purposes of any of the licensing objectives, or  
to extend the application of any condition specified in the schedule.”*

*The Scottish Ministers may by regulations prescribe further conditions as conditions which Licensing Boards may, at their discretion, impose on the granting by them of premises licences.”*

*Without prejudice to subsection (3), where a Licensing Board grants a premises licence, the Board may impose such other conditions (in addition to those to which the licence is subject by virtue of subsection (1)) as they consider necessary or expedient for the purposes of any of the licensing objectives.”*

**17. SBPA View: It is clear from the Policy Memorandum (Section 86) that the Executive are proposing that Licensing Boards would have a range of additional national standard licence conditions that they could apply to premises that were classed as “late opening.” SBPA did not support this view in the Expert Reference Group and view these additional conditions as unnecessary. Given that part of the thrust of the legislation is the abolition of permitted hours it would seem contradictory to then impose additional conditions on a licence simply because of an arbitrarily set “late hour” of midnight as outlined in the Bill. Many pubs already operate beyond this hour without these conditions and we believe that giving Boards the discretion to apply these additional conditions will simply add costs to running a premises without good reason.**

## Variations

*“Part 3 - Section 27 Application to vary premises licence*

(6) *In this Act, “minor variation” means—  
any variation reflecting any alteration or proposed alteration of the internal layout of the premises, if the alteration does not result in any significant change in the capacity of the premises”*

**18. SBPA View: We have a concern that retailers may find themselves having to apply for a major variation to their licence, including having to undertake the public notification processes, if they undertake relatively minor changes to their premises, for example adding a window seat to a bar or removing bar dividers within a premises. We do not know how the Executive would define “significant” as outlined in this section.**

## Transitional Arrangements

*“Part 9 – Section 136 Orders and regulations”*

*“Part 3 - Section 48 Certificates as to planning, building standards and food hygiene”*

**19. SBPA View: It is clear that in moving from the current licensing regime under the 1976 Licensing (Scotland) Act to the new regime that a process has to be agreed for this to happen as timeously and with as little upheaval as possible consistent with the new licensing structure.**

**20. In England and Wales, the Government has granted the licensed trade so called “grandfather rights”. This is a provision exempting persons or other entities already engaged in an activity from rules or legislation affecting that activity. The licensed trade in Scotland requires certainty to secure current and future investment jobs and prosperity.**

**21. We would therefore propose that the Scottish Parliament accept that established businesses which enjoy the benefits of a liquor licence and hours in terms of the Licensing (Scotland) Act 1976 should have the presumption of being entitled to a premises licence with existing hours and be excluded from having to provide Section 48 certification on the basis that such a presumption may be rebutted if it can be demonstrated by an objector that the operation of any such business materially contradicts the Licensing objectives.**

**22. If an objector can demonstrate that the operation of any such business materially contradicts the Licensing Objectives then a premises licence for an established businesses should only be refused if the draft operating plan for such business cannot reasonably be amended to resolve such contradictions.**

**23. We also believe that the transition from the current regime to the new one should be completed within as short a timescale as is possible consistent with good administration. Given that the process of licensing reform began in Scotland in May 2001 and that it could be late 2007 before any Licensing (Scotland) Act is enacted we believe it would be poor administration to have, for example, a further three year transition period which could mean**

that licensing reform would have taken the best part of a decade to complete.

## Occasional Extensions

*“Part 4 - Section 53 Occasional licence”*

**24. SBPA View:** It has been suggested by the Scottish Executive that the provisions on Occasional Licensing as outlined in the current draft bill can be readily applied to the operation of existing licensed premises. The provision on “Occasional Extensions” (which relate to already licensed premises) are covered separately in the Licensing (Scotland) Act 1976. We do not believe in practical terms that Boards would be prepared to grant licensed premises occasional extensions under the proposals in the Bill, nor do we believe that it is possible for a licensee far enough in advance to seek an occasional licence for an office party or wedding reception in terms of the current provisions of the Bill. We would suggest therefore that there need to be separate provisions on this issue in the Bill, consistent with the 1976 Act.

## Training

*“Part 6 - Section 82 Power to prescribe licensing qualifications”*

**25. SBPA View:** Many of our members already undertake accredited in-house training programmes and training is viewed as an essential component in improving their customers’ experience. We would ask that any statement of requisite qualifications for bar staff or managers recognises this and that these should not be unfairly excluded from the training qualifications stipulated in regulations. We also believe that the list should not be too prescriptive given that this will again restrict the training options for companies and drive up the unavoidable costs of training.

**26.** It is also important for the prescribed qualifications to reflect the fact that during the initial transitional period when individuals are applying for personal licences they may not have had the opportunity of obtaining any new qualifications stipulated under any legislation.

## Appeals

*“Part 9 – Section 122 Appeals*

*(4) An appeal against a decision of a Licensing Board to suspend a premises licence may, if—*

*the decision has immediate effect, and*

*the ground of appeal is that specified in subsection (5)(b),*

*be made by summary application to the sheriff of the appropriate sheriffdom.”*

**27. SBPA View:** The legislation makes clear that the suspension of a licence will come into immediate effect (unlike the current system where the licensee has the right to appeal the decision prior to the sanction being implemented.) If a premises has its licence suspended and as a consequence has to cease trading and an appeal against the decision cannot be held quickly there is a danger that the trading position of the business in question will be so irrevocably damaged as to make it impossible to start trading again successfully if their appeal is

subsequently upheld. This makes it essential that reassurances are given and practice established that a court hearing is held within at most a two-week period of a suspension being implemented. The timing of any appeals in this situation is critical.

## **Fees**

*“Part 9 - Section 127 Fees*

*The Scottish Ministers may by regulations make provision for the charging of fees by Licensing Boards—*

*in respect of applications under this Act, and*

*otherwise in respect of the performance of functions by Licensing Boards, councils and Licensing Standards Officers under this Act.”*

**28. SBPA View:** We are concerned at the current lack of detail on the proposed fee structure for the new licensing system. The industry recognises that there will be an increase in fees overall given the expanded scope of the Licensing Standards Officers and that “larger” premises will be asked to pay proportionately more. However, this is already the case with larger premises paying more in business rates with this figure directly related to their turnover.

**29.** It should also be noted that although many premises in Scotland are part of a larger retail pub chain, many of these premises are leased or independently managed. We would not wish the new Licensing Boards to “goldplate” their new licensing functions with the licensed trade picking up the costs. We would hope that the Scottish Executive would be in a position to provide the final detail of how the new fee structure will work prior to the Bill being passed by the Scottish Parliament, so that this can be subjected to further scrutiny. Indications from England and Wales are that the new fee structure has increased costs to the trade by a factor of four and this will constitute a major cost to the industry going forward. Indeed, it may be that the Scottish Executive wishes to consider transitional support for the new Boards in order to offset some of the costs to the industry.

## **Irresponsible drinks promotions**

*“Schedule 3 - Irresponsible drinks promotions”*

**30. SBPA View:** We support action to tackle “irresponsible promotions,” but we would suggest that the wording in the Bill is too prescriptive given that promotional activity is a legitimate tool for promoting new products, as distinct from selling existing products more cheaply. We are also concerned that the Scottish Executive are taking powers to apply restrictions to the off licensed sector but have given no indications at the moment that they will use them.

**31.** There is already industry best practice on the conduct of “responsible promotions” which has been previously endorsed by the Scottish Executive, and we would suggest that there should some provision which would allow these limited promotions in relation to new products to continue.

- 32. Anecdotal evidence from our members suggests that there is an increasing trend, particularly amongst younger drinkers, of consuming alcohol purchased from the off sales sector at home, and then coming out for an evening to frequent on sales premises, passing the consequent problems of “binge drinking” onto the on trade. In the past, there has been a presupposition that the on and off trade are different and separate entities. This is no longer the case. Nowadays consumers make a choice between the two and are therefore using the same market, for example, by taking bottles of wine purchased from an off sales premises to a restaurant where they can consume the wine on payment of a corkage charge.**
- 33. We believe that any restrictions on the on trade as regards promotions should apply equally to the off trade, otherwise it risks simply displace the problem of “binge drinking” to other environments, most notably the home.**

#### **Young People**

- 34. SBPA View: We note the Executive’s intention in the Policy Memorandum to the Bill (Section 138) of “requiring licensees offering an on-sales service to think actively and seriously about whether their premises are suitable for children by choosing whether to “opt in” to access by children.” In our earlier submissions to the Nicholson Committee and other Executive consultations we took the view that an “opt-out” system should apply to access to a licensed premises by children. We believed this would help address the early education of young people in the acceptable and responsible supervised use of alcohol rather than continuing to present licensed premises as somewhere that they should not be allowed to enter. We hold to that view going forward and would wish the Committee to consider this issue.**