

Mr Ian Fairweather
National Licensing Forum Secretariat
The Scottish Executive
Area 3-H South
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22nd November 2005

Dear Ian

**LICENSING (SCOTLAND) BILL 2005 - NATIONAL LICENSING FORUM
CONSULTATION ON OVERPROVISION**

Thank you for your correspondence of 12th October 2005 regarding the above.

The following comments are lodged on behalf of the Scottish Beer and Pub Association which was originally formed in 1906. Our 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. 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.

This submission is also lodged on behalf of the British Hospitality Association in Scotland. The BHA is the national association for the hotel, restaurant and catering industry and it has been representing the hotel, restaurant and catering industry for over 90 years. The BHA represents some 3,000 establishments in Scotland, across all sections of the industry – not just group-owned properties, but also hundreds of individually owned hotels and restaurants.

As a starting point I would repeat the view we have held consistently over a period of time and which has been confirmed by several Boards, namely that there is not a general overprovision of licensed premises in Scotland. There may be specific locations with specific issues which need to be addressed by Boards exercising their local knowledge and by the operation of the marketplace. From recent discussions with Board members in the context of the National Licensing Conference, it is clear that there is reticence from Boards themselves about being able to conduct a "duty to assess overprovision" and as such we would question at this stage whether this requirement will be practicable.

We would offer the following brief observations on the consultation paper:

- i) We note the comments in the consultation in **Section 1.13: ““The Licensing Board may however consider that information which the chief constable is capable of providing is a solid starting point. The chief constable will be able to: identify "hotspot" areas within the Licensing Board's area where it can demonstrated that crime, disorder and nuisance are caused by customers of a concentrated number of licensed premises; suggest other areas in which the number of licensed premises or premises of a particular description is moving closely towards overprovision; and provide the Licensing Board with the geographical boundaries of those areas.”** We would suggest given the current inaccuracy and non-comprehensiveness of many statistics currently collated by the police (which they themselves readily admit) this would seem to place too much onus on the police input rather than Boards exercising their own knowledge;

- ii) We note the comments in **Section 1.14 that “The Licensing Board should then identify the number of licensed premises or premises of a particular description in those localities and their capacities and fulfil its consultation obligation.”** We would suggest, as we have done a number of times during the processes around the Licensing Bill that out there is no meaningful relationship between the “capacity” of a premises (which in a great many cases is and will never be achieved and operationally for others perhaps achieved in less than 30% of their actual trading hours) and the issue of “overprovision.” It has been stressed many times that the nature of the business in any particular premises will also have major influence on the meaning of capacity. This point has been recognised to some extent by the amendment to the meaning of “capacity”, in S137 of the new Licensing Bill by the adding of the words “or any part of such premises” and “or, as the case may be, that part”;
- iii) We note the comment in **Section 1.17 that “evidence from the licensed trade that the density of licensed premises in the locality has resulted in levels of competition which have applied downward pressure on the price of alcohol.”** We are not sure what nature this “evidence” may take but would point to the fact that many licence applications under the 1976 Act are the subject of so called trade objections which in many cases are over ruled by Boards. By including this provision we would suggest that any “evidence” provided would be largely subjective and would have the effect of restricting the ability of new entrants to enter the market place. Already some operators sell drinks cheaply and others the opposite as part of the business model for their premises rather than in response to “competition”;
- iv) Similarly, we would question some of the other measures of overprovision as suggested by Section 1.17 especially given that these are contradicted by some comments in Section 1.18. For example, in 1.17 it is said that overprovision can be assessed with reference to **“evidence gathered from local residents of anti-social behaviour associated with licensed premises”** and yet in section 1.18 Boards are specifically told to not take into account ... **“the manner in which individual premises in a locality are managed, since it is perfectly possible that well-conducted premises may act as a magnet for anti-social behaviour”**;
- v) We also note the suggestion in Section 1.18 that decisions about overprovision should not take into account **“the need or demand for licensed premises in the locality (because) commercial considerations are irrelevant to a policy which is designed to protect the wider public interest.”** It is difficult to see how overprovision can be deemed to exist in a location where there is an unmet demand for licensed premises, especially as this may already have been identified by the local planning processes. Commercial interests are patently important if the Scottish Executive is to achieve its target of 50% growth in our industry by 2015 (Scottish Executive – “Scottish Tourism – A draft framework for change”);
- vi) We note in **Section 1.20, “The consultation carried out by the Licensing Board may disclose that communities are placed under stress only by licensed premises sharing certain characteristics: for example, a concentration of off-sales in a residential area or the density of “vertical drinking establishments” in a town centre. It should therefore consider carefully whether it wishes to decide that overprovision exists in any locality simply having regard to the number of licensed premises and their capacities. Such an approach should only be adopted in exceptional circumstances. Proper regard should be given to the contrasting styles of operation of different licensed operations and the differing impact they are likely to have on the promotion of the licensing objectives.”** We would suggest it would never be appropriate for a Board to determine overprovision exists purely on the basis of the number of licensed premises, even in

“exceptional circumstances” and as such the guidance should exclude this possibility ever arising. The current section 17 1 (d) of the 176 Act which focuses on numbers of licences and replaced the original wording, “same or similar kind,” has been shown to be a poor amendment. Boards are and should be able to exercise discretion in these matters;

- vii) We note the comments in Section 1.21 which we would suggest seem to dwell at great length on the problems caused by on licensed premises whilst giving little attention to some of the issues caused by pure off licensed premises, particularly in relation to anti-social behaviour. These have been identified by the deliberations of the Daniels Committee and the report in June 2005 by the Scottish Association of Alcohol Action Teams (SAAAT). We would therefore ask that more clarity is given to Boards on the position of pure off-licensed premises not least because they now account for 40% of alcohol sales and that the number of off-licensed premises has increased by 25% since 1980 whilst the number of pub licensed premises has increased by 16% over the same period, despite the diversification of pubs into a non-alcoholic offer;
- viii) We note the suggestion in **Section 1.23 that “Where a Licensing Board's policy statement has concluded that in a particular locality there is an overprovision of licensed premises, or licensed premises of a particular description, an application for a new premises licence or for the variation of an existing licence in that locality should normally be refused.”** We would point to the fact that according to the draft guidance the trading hours of a licensed premises are not to be considered by Boards as part of their overprovision assessment, and yet a variation in the trading hours of a premises for either on sales hours or off sales hours or both will be considered as a major variation. On that basis the impact of this section could in its practical application be to restrict the trading hours of an existing premises on the grounds of overprovision despite this not being a material consideration in such circumstances. On that basis we would argue that variations of trading hours cannot and should not reasonably be refused as suggested by Section 1.23;
- ix) We welcome the fact that any overprovision policy as agreed by Boards will allow scope for “exceptions” to be made.

As a generality there is real need for a statutory obligation on Licensing Boards and planning departments to liaise to ensure that licensing policies fit with local and national planning policies. Investment in new and existing projects requires a reasonable degree of certainty. Without this certainty and given the restrictive nature of the new Act there is little realistic possibility of the Scottish Executive achieving its target of 50% growth in our industry by 2015.

I trust that our comments are of use.

Yours sincerely

Patrick Browne
Chief Executive