

# Alcohol Focus Scotland Response to the Licensing (Scotland) Act 2005 – Consultation on Draft Guidance for Licensing Boards and Associated Draft Regulations

## General comment

1. Alcohol Focus Scotland welcomes the opportunity to comment on this guidance. This document will be the key source of guidance for the formation of policy, practice and interpretation of the new Licensing Act by licensing boards and others – ultimately guiding the standards set in licensing for the foreseeable future. Given the importance of the document we are disappointed to note the short length of the consultation period – only two months – especially when the previously published licensing timetable had indicated it would last three months. We feel this may reduce the number of organisations able to respond and, in some cases, also reduce the quality of the responses submitted. We further note the many small inaccuracies in the document, such as mis-spellings, omissions and, in a few instances, less than clear phraseology. This suggests a document produced in haste. This is also of concern to us, given the importance of the legislation and its guidance.

## Section 1 Introduction

2. **Point 5 Departure from the Guidance** - We note that this section sets out the case in which licensing boards may depart from the Guidance. While we acknowledge that there may be such occasions, we are concerned that there is no guidance here for those parties who do not agree with the board's reasoning. What redress will there be for such persons and to whom should they report their concerns?

## Section 2 Licensing Policy Statements

3. **Point 22 Licensing hours** – Alcohol Focus Scotland has for some time had concerns that the new Act may mean an overall lengthening of licensing hours, which, given the huge rise in alcohol problems, we believe would not be in the public interest. Since Licensing Boards will effectively have the power to decide on opening times, we have concerns about how they will create an over-arching hours policy. How can a Board ensure equitable practice? For example, if all premises want to open later and the Board's policy is to stagger closing times, how will it be decided which premises will close first? We believe there is a real danger that premises and Boards may be drawn into later opening because of competition or perceived competition. We also think that unless the policy is very clear, there is likely to be confusion for the public and for the police – how will people actually know when a premises will/should close? We believe that if all Boards operated a system of bandings for opening and closing times, dependent on the type of operation for each premises, this would result in a clearer and more controlled system.
4. **Point 24 18 hours 'reasonable'** - Alcohol Focus Scotland disagrees with the advice that "Boards may wish to consider applications for up to 18 hours as being deemed to be reasonable." 18 hours is much more than the current norm. We recommend that this phrase is deleted, as there is a danger that this could easily become the new 'norm'. If it is felt there is a need to give advice on what is reasonable, then this should be based on the current norm. For example, up to 14 hours for a premises operating as a public house could be said to be reasonable (such as an opening period of 11am until 1am.)
5. **Point 25 One off local or national festivals** - Alcohol Focus Scotland is concerned the implication given here is that one off festivals should be 'routinely' classified as exceptional events and so worthy of up to 24 licensed hours. We believe that in many cases such events can be appropriately accommodated within the Board's normal licensing hours policy. There is a danger that such events, especially when granted greatly extended hours, can result in extended heavy drinking, with all the dangers that this brings. Any extension beyond the normal hours policy should only be taken after careful consideration of the

particular event and should require increased control measures in place aimed at preventing / limiting problems.

6. **Point 27 Relationship with other strategies** - Alcohol Focus Scotland welcomes the approach which recommends co-ordination and integration of a range of council policies with licensing policy and the five licensing objectives. However we believe there is a need for further action and guidance. There is a need for at least some communication between boards, especially neighbouring ones, on their policies. We believe there is a role for a national committee to communicate, collect info and offer advice with a view to creating a consistent and fair approach. We suggest this could be an ongoing role for the National Licensing Forum. We also feel that there are some particular issues where a national approach is needed. For instance we have concerns about the possible effects of the new Licensing Act on tourism. With Scotland's current drinking culture and the probable lengthening of hours under the new Act, the impact on tourism will need to be carefully monitored and managed. In addition there is the issue of language. While boards need to understand and uphold issues of racial equality, there are particular issues where English is not the first language. We feel these should be acknowledged in the Guidance, with clear direction at a national level, otherwise there is a danger that differing standards will develop on this issue.
7. **Point 28 Transport** – Alcohol Focus Scotland is pleased to see a statement on the need to link with local authority bodies with regard to transport. However we feel there is a need for the planning to extend beyond the city centres. As more city centres improve their late night transport infrastructure, there is a growing problem of 'dumping' in the satellite zone, with people unable to find transport links for their ongoing journey.
8. **Point 29 Tourism, employment, planning and building control** - Alcohol Focus Scotland has concerns about how this might be interpreted and we feel that further direction is needed. For instance, some boards may interpret 'extra tourists should mean extra hours' which is likely to lead to problems. Instead extra hours should be based on the provision of other services such food and entertainment etc.
9. **Point 32 Content of policy statements** - Alcohol Focus Scotland welcomes the clear guidance about what each boards' policy statements should cover, including four key strands. However, there is no guidance about how this information should be made available or indeed where the public could obtain this guidance. We feel it would be enormously helpful for both the public, and those in the licensed trade operating across Boards, if there were some central point where all such policies could be accessed.

### **Section 3 Overprovision assessment**

10. Points 33 and 34 – Alcohol Focus Scotland is comfortable with the delay in bringing in the additional measures on overprovision so as to enable collation of the information on premises capacity not currently available. However, we strongly feel that this period must also be used to ensure there is a robust system of assessment, which takes into account the total / cumulative impact of all the licensed premises in an area and is not only based on premises capacity.

### **Section 4 Premises licence**

11. **Point 43 Operating plans and Layouts** - Alcohol Focus Scotland agrees with the advice given, and further suggests that such advice should be incorporated into the training for personal licence holders.
12. **Points 49 - 51 Sports grounds** - Alcohol Focus Scotland's view is that there should be stronger rules about not allowing alcohol into sports grounds and that the same rules should be applied as during designated events. There have been instances of problems with large events such as at the Robbie Williams concert, when a number of young people

received were brought to the attention of the emergency services due to the over consumption of alcohol.

13. **Point 58 minor variation premises licence** - Alcohol Focus Scotland considers that where a variation is permanent with regard to children, then this should be classified as major variation and so be subject to proper scrutiny. Such a variation would be likely to change the whole character of the premises.
14. **Point 66 Objections and representations** - Alcohol Focus Scotland is concerned that the Chief Constable's ability to object is being limited to just 'involvement in serious organised crime'. The Chief Constable may have relevant information about alcohol or licensing misdemeanours, which the board should be able to take into account.
15. **Point 82 Powers of a Licensing Board on the determination of a review** - Alcohol Focus Scotland welcomes the direction given here that the norm should be problem solving through discussion as the first stage, with sanction only as a second stage.
16. **Point 90 Irresponsible promotions** – While Alcohol Focus Scotland welcomes the push to tackle irresponsible promotions and the statement here that this is central to the policy objectives of the new licensing system, we feel that some of the wording given here is inappropriate. We do not feel that young women should be particularly singled out, since binge drinking is common among both sexes, nor does it just affect young people.
17. **Point 91** Alcohol Focus Scotland considers there should be a qualification added to the 72 hours restriction that changes in price should not be allowed within the trading day. By beginning a 72 hour period of lower prices towards the end of a day, as the law currently stands it would be possible for a premises to effectively create a 'happy hour' period. Overall we feel the approach taken on promotions does not give Boards sufficient flexibility to tackle the problem. Boards should be able to tackle any promotion which they think compromises the licensing objectives. It is our view that distinction made between products and promotions is flawed. There are some products which, by their very nature and the way in which they are presented, are irresponsible. This includes drinks of high alcoholic strength designed to be drunk very quickly e.g. shooters. We also have concerns about promotions on large volume high strength products. A common example of this is 3 litres for the price of 2 on high strength ciders, particularly since the advice on label recommends consumption within a couple of days.
18. **Points 91 – 100** - Alcohol Focus Scotland's view is that the passages seem to present a contradictory view on price. Point 91 includes the sentence "Ministers believe that one of the most effective ways to tackle promotions is to tackle price." However in point 100 it is stated that "These provisions are directed specifically at promotional activity and not at pricing activity. ... Ministers do not intend to prescribe the prices at which any alcohol or measure of alcohol is to be sold." Alcohol Focus Scotland believes that price and promotions are inextricably linked, and that while tackling promotions may offer the most tenable solution at present, it is unwise to completely rule out possible future actions relating to price.
19. **Point 93 Irresponsible promotions off-sales** - Alcohol Focus Scotland believes that with the increasing evidence<sup>1</sup> of the rising trends in pre-loading (also known as front-loading) that is people buying and consuming large amounts of alcohol before setting out for a night out in on-licence premises, it is time for meaningful action to prevent problematic off-sales promotions. These include multiple purchase offers, which can bring the price of alcohol to incredibly low levels and which encourage people to buy in large amounts.

#### **Section 5 Occasional licence**

20. **Point 102 /109 voluntary organisations** - Alcohol Focus Scotland is concerned that voluntary organisations are not required to have a personal licence holder and so can have

someone in charge who has not been trained to the approved new standard. Under the new Act voluntary organisations are being allowed more trading time - each organisation can have up to 56 days per year. We feel it is completely inappropriate that any organisation can be permitted to trade without evidence of adequate training. This creates a lesser standard of operation. Even if a voluntary organisation had only one event, potentially this could be large and, if badly run, could easily do a lot of damage.

21. **Point 120 Relaxation of opening hours for local, national & international events** – Similarly to point 25, Alcohol Focus Scotland believes that Boards should be directed that extension of hours for such occasions should not be 'automatic'. There is a danger that such events, especially when granted greatly extended hours, can result in extended heavy drinking, with all the dangers that this brings. Any general extension should only be taken after careful consideration of the particular event and should require increased control measures in place aimed at preventing / limiting problems. We are also concerned that the boards do not have to consult the police, before granting a general extension of hours. Given the impact that such an extension could have on police operations, we feel that it is essential that the police are at least consulted.

### **Section 6 Personal licence**

22. Point 132 Knowingly allowed - Alcohol Focus Scotland feels that the term 'knowingly allowed' is too vague. We consider it could be used as a defence when no real effort has been made to put a preventative system in place. Instead we suggest that the term due diligence is more meaningful, since it is possible for a licence holder to be given an explanation of what this means, and what they should be doing, so they can put the appropriate steps in place.
23. **Point 135 Eligibility for personal licences** Alcohol Focus Scotland's view is that 18 is too young for someone to be a personal licence holder. We suggest the age threshold should be 21 and over
24. **Points 136/ 137 Application for personal licences** - Alcohol Focus Scotland's view is that the flow of potential information from the police has been too limited. What if an applicant has received warnings for bad behaviour but no actual charges were brought – surely this would still be relevant to their application? We would like to see more guidance as to what constitutes a 'relevant offence'. Would a conviction for drink driving be a relevant offence? Is a sexual offence relating to children a relevant offence?

### **Section 7 Control of order**

25. We think it is helpful for guidance to be included on the control of order. Although it is acknowledged that this is not binding, it provides good explanation for all involved

### **Section 8 Excluded premises**

26. Point 192 Garage forecourt shops / community resource – Alcohol Focus Scotland cannot see the justification in the case of a garage that is the principle source of fuel to be able to sell alcohol – this should only be permissible when a garage is the principle source of groceries.

### **Section 9 Exempt premises**

27. Point 196 Alcohol Focus Scotland can see no justification as to why airports and trains should be exempt from the rules on training. Given the numbers of people and the potential for heavy drinking, we believe it is particularly important that all staff are trained to recognise the early symptoms of drunkenness and those who are possibly underage, that staff understand all the surrounding issues, including how to proactively manage such situations and how to refuse service. We also believe that there are particular issues relating to travel on trains. At present there is commonly a tolerance by staff and other passengers, to large amounts of alcohol being brought onto and consumed on trains, particular by groups who often behave in a way that is intimidating and sometimes offensive

to other passengers. Such behaviour is completely unacceptable in any setting, whether in the home, streets or in public transport. In the interests of consistency of approach we recommend that the same rules on training should apply to these settings.

### **Section 10 Sale & supply of alcohol to children**

28. **Point 210 Young offenders teams** - Alcohol Focus Scotland welcomes the recommendation that Licensing Boards should keep in close contact with young offenders' teams etc. We feel it would be helpful if such parties were recommended for inclusion in the local licensing forum.
29. **Point 225 Children receiving alcohol** - Alcohol Focus Scotland is concerned that it will not be an offence to allow a child to receive alcohol in the home on the behalf of an adult. We feel this could be a loop hole which encourages children to attempt to buy alcohol by using their parent's names.

### **Section 12 Other offences**

30. **Point 262 Antisocial behaviour** - Alcohol Focus Scotland feels there must be an error in the wording of this paragraph, as currently written, since it doesn't make sense.
31. **Point 269 Off-sales deliveries** - Alcohol Focus Scotland believes it should be an offence for any premises, not just those that are off-licence, to deliver alcohol between midnight and 6 am.

### **Section 13 Transition**

32. Alcohol Focus Scotland welcomes the approach that is taken. We believe the period bandings set out at point 279 will encourage licence holders to apply for their new licences (having previously undertaken the appropriate training) in a manageable way throughout the transition period. This will reduce the likelihood of the majority of applications being left until the end of transition, as happened in England and Wales.

## **Draft Regulations**

33. Page 45 **Discretionary Conditions** - Alcohol Focus Scotland is pleased to note the inclusion of a condition that requires alcohol to be displayed in a separate area from other goods. However, we would prefer to see this made a mandatory condition, rather than a discretionary one, so that it becomes standard practice. Additionally, we are at a complete loss to understand the exceptions listed. We fail to see any justification for allowing alcohol to be sold with the listed exceptions of 'crisps, nuts, sweets, non-alcoholic drinks, newspapers or bread'. These exceptions should be deleted. We also think that the current practice of selling alcohol along with 'hang-over cures' or medicines is totally inappropriate and should be prevented. We believe many could view this as a 'permission' to over indulge rather than to drink sensibly.

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<sup>1</sup> Forsyth, Dr. A., Factors 'Associated with alcohol related problems within licensed premises', Report to Greater Glasgow NHS Board, 2005.