

Off-sales in the Community

- The Report of the Working Group on Off-sales in the Community

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Working Group on Off-sales in the Community

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INTRODUCTION

CHAPTER

Remit

1.1 On 2 September 2003 the First Minister, Jack McConnell, announced the formation of a short life Working Group with the following terms of reference –

"In the light of the evidence from Sheriff Principal Nicholson's Review of Liquor Licensing, and from consultation on the Anti-Social Behaviour Bill, to consider the issues surrounding the regulation of off-licences and to make recommendations to Ministers on:

- The scope for better engagement and consultation at community level on the grant of licences; and
- Management and enforcement mechanisms which will help to prevent off-licences being a focus of anti-social behaviour".

The Group was asked to report by the end of the year, so that Ministers could consider its recommendations in parallel with the outcome of the consultation on the Nicholson Report.

Background

1.2 The Scottish Executive launched the Nicholson Committee's Review of Liquor Licensing Law in Scotland on 19 August 2003. In welcoming the report, Ministers announced they would be seeking comments until Christmas 2003 on the report and its recommendations. The Committee, chaired by Sheriff Principal Gordon Nicholson, had been set up on 28 June 2001 by the Deputy First Minister, Jim Wallace, with the following remit:

"To review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public order; to recommend changes in the public interest; and to report accordingly".

1.3 The Nicholson Report sets out a framework of licensing principles that should inform all the decisions taken by a licensing board. Those principles (which were warmly endorsed by all sides at a Scottish Parliamentary debate on the report on 17 September 2003) are:

- The prevention of crime or disorder;
- The promotion of public safety;
- The prevention of public nuisance;
- The promotion of public health; and
- The protection of children from harm.

1.4 The report sets out proposals for a simpler and more user-friendly licensing system, but also one where rigorous controls would still be exercised. Both personal and premises licences would be required and licensing boards would take decisions on the basis of a detailed operating plan for the premises in question. Boards would be able to refuse or amend an application even if there were no objections. New liquor licensing standards officers would act as the 'eyes and ears' of the boards in monitoring the way in which licensed premises were run and ensuring that abuse was identified and dealt with quickly. The report made clear that further detailed work on enforcement would be required by the Scottish Executive. The Nicholson Report also recommended the formation of statutory local licensing forums to allow the various interests to keep the licensing system in their area under review and to meet the licensing board at least once a year. These interests would include residents' groups or associations.

1.5 Over the summer the Scottish Executive consulted on *Putting our Communities First: A Strategy for Tackling Anti - Social Behaviour*, which was published on 26 June 2003. As part of that consultation Ministers visited over 30 constituencies at the request of local MSPs to hear from local people about their experiences of anti-social behaviour and to hear views on the Executive's proposals.

1.6 Many people raised with Ministers a concern that local off-licences can act as a focal point for anti - social behaviour. In Cumnock, Ministers were told, to applause from the audience, that "off-licences were the single largest contributory factor [in anti-social behaviour]"; in Leven, alcohol from off-licences was said to be a serious factor in anti-social behaviour by young people; while in Dundee, concern was expressed that not enough was being done to tackle those off-licences and corner shops that were selling alcohol to young people. Similar comments were made throughout the country.

1.7 Ministers, therefore, concluded that within the tighter new framework for the granting of licences set out in the Nicholson Report there was a need for some further work on two aspects of off-licence regulation:

- The extent to which local people have an effective say on the grant of licences in their area; and
- Management or enforcement mechanisms that will ensure that any problems are quickly identified and effectively dealt with.

What is an off-sales licence?

1.8 The main piece of legislation concerning off-sales is the Licensing (Scotland) Act 1976 (hereinafter referred to as the 1976 Act). This states that an off-sales licence 'is a licence granted in respect of premises specified therein which authorises the holder thereof to sell by retail alcoholic liquor for consumption off the premises only'.

1.9 All licences have effect until the quarterly meeting of the licensing board three years after the meeting at which the licence was granted or renewed. At present the permitted hours for the operation of an off-sales licence are as follows:

- Monday to Saturday 8.00am until 10.00pm;
- Sunday 12.30pm to 10.00pm.

Number of liquor licences in force in Scotland

Liquor licences in force at 31 December 2002 in Scotland by licence type¹

Licence Type	1945	1965	1980	2000	2002
On-sale	5,586	6,802	8,993	10,876	10,810
Off-sale	2,188	3,385	4,899	6,336	6,249
All licences	7,774	10,187	13,892	17,212	17,059

1.10 Over a third of all licences in Scotland are for off-sale premises. The number of these licences has grown by around 30 per cent since 1980 although the figure has remained fairly steady at around 6,350 since 1996. The increase in off-sales licences suggests that a significantly larger quantity of alcohol is now being purchased for consumption away from on-licensed premises than was formerly the case.

¹ Figures based on those given in the Report of the Departmental Committee on Scottish Licensing Law, Cmnd. 5354 (known as the "Clayson Report") and Scottish Executive Liquor Licensing Statistics 2003.

Health & Crime figures

1.11 There are some general statistics available which provide information on the links between alcohol and crime. A Home Office report of 2000 estimated that 40% of violent crime, 78% of assaults and 88% of criminal damage cases were committed while the offender was under the influence of alcohol. An Omnibus Survey, which tested public opinion on licensing laws and alcohol consumption, carried out by Scottish Executive Social Research in 2003, showed that 94% of those surveyed believed there was a problem with under-age drinking in Scotland. Interestingly, all of the 16-17 year olds surveyed agreed with this (para 3.24).

1.12 Other statistics have recently become available through the *Scottish Schools and Adolescent Lifestyle and Substance Use Survey (SALSUS) National Report*, produced for the Scottish Executive by the University of Edinburgh. This is a survey, published in November 2003, of smoking, drinking and drug use among 13 and 15 year olds in Scotland in 2002. The report shows, *inter alia*, that –

- 88% of 15 year olds and 69% of 13 year olds have had a “proper alcoholic drink”;
- there has been a 60% increase in reported drinking among 15 year olds and more than a 100% rise in drinking in 13 year olds over the last 12 years;
- 44% of 15 year olds and 24% of 13 year olds reported drinking once a week, or more often;
- although it is illegal to sell alcohol to under-18s (and for under-18s to buy or attempt to buy alcohol), shops and off-licences were the most frequently reported source of alcohol for 15 year olds. 31% reported buying alcohol from shops and supermarkets and 23% reported buying from off-licences. It is worth noting, however, that 30% reported that they never buy alcohol;
- 35% of 15 year olds reported that their most common location of drinking was outdoors (street, park, or other outdoor area).

1.13 The *SALSUS* National Report also obtained information for the first time on both drunkenness and the harmful effects of drinking alcohol (vomiting, fighting, injury, absence from school, use of drugs, unprotected sex). Over 75% of 15 year olds and over 50% of 13 year olds reported having been drunk at least once in the last 30 days. 39% of 15 year olds and 60% of 13 year olds had not experienced any of the harmful effects listed. However, 21% of 15 year olds and 9% of 13 year olds had experienced 3 or more effects.

Our Approach

1.14 Our intention was to produce a short focused report which acknowledged and built on the foundations set out by the Nicholson Committee. Although our remit specified a closer look at aspects of off-sale regulation, because of the nature of liquor licensing laws it became clear early on that some of our recommendations would have wider ranging effect. It is difficult, for example, to consider the role of communities in relation to off-sale licences separately from their role in relation to licences given to pubs and nightclubs. Of course, the Nicholson Report recommends in any case that there should in future be only one premises licence.² Our report makes it clear which recommendations would have wider impact and we hope to see them considered in this light.

1.15 Due to the demanding remit and tight timescale, we decided to make use of already existing information and the wide personal knowledge of the individual members of the Working Group.

1.16 Despite the more recent information that has become available over the last two years or so, there is a lack of statistical evidence to illustrate the extent of the problem of off-licences as a focus for anti-social

² While content with the recommendations in the report, Paul Waterson of the SLTA and Scott Landsburgh of the SGF, would like it noted that their organisations do not support a single premises licence but would prefer to see separate on-sale, off-sale and entertainment licences.

behaviour. This is, understandably, a source of frustration to the licensed trade and something we feel the Scottish Executive should seek to address. We have had to rely, therefore, on much of the material which informed the Nicholson Committee in their deliberations and the information which formed the basis of the Scottish Executive's *Plan for Action on Alcohol Problems*. These, together with the findings of Ministers on their summer visits to constituencies and the responses to the Scottish Executive's consultation on Anti Social Behaviour, have informed our discussion and led to our recommendations.

1.17 The Group formed two sub-groups, one to consider the needs of communities, the other to consider enforcement issues. These sub-groups met twice and contributed their findings to the full Working Group. The full Group met four times on 7 October, 4 November, 2 December and 23 December 2003.

1.18 We understand that Scottish Ministers will consider our findings alongside the Nicholson recommendations. Since our approach has been to build on these recommendations, we hope that it will be seen as a useful contribution to the review of Liquor Licensing Law in Scotland and will help in the design and implementation of a more effective, fair and transparent system.

1.19 We have divided our report into five chapters. Following this introduction, Chapter 2 extracts and reiterates those recommendations from the Nicholson Report which, if implemented will impact on the regulation and operation of off-sales. The next two chapters deal with our specific remit. Chapter 3 considers how people could and should be engaged and consulted on the provision of off sales within their communities. Chapter 4 contains our recommendations with regard to management and enforcement mechanisms that might help to address any anti-social behaviour problems associated with off-sales. Finally, Chapter 5 summarises our recommendations.

CHAPTER TWO: THE NICHOLSON PROPOSALS

CHAPTER

2.1 This chapter sets out those key recommendations of the Nicholson Committee which have a bearing on off-sales.

2.2 In tackling the remit, we saw the Nicholson proposals as a natural place to start. We found ourselves in broad agreement with the proposed system envisaged by the Nicholson Committee and set out in its recommendations.

2.3 We also supported the Minister for Justice's statement, made during the parliamentary debate of 17 September 2003, which sought to clarify the position with regard to 24-hour drinking. We agree that 'there is little or no argument for any premises to routinely sell alcohol throughout the day and night'. The thrust of the Nicholson proposals is to allow flexibility but in a manner which suits specific local and community circumstances.

The Nicholson Proposals

The Licensing Principles

2.4 Underlying any decisions made by the licensing board would be the following licensing principles (a) the prevention of crime or disorder; (b) the promotion of public safety; (c) the prevention of public nuisance; (d) the promotion of public health; and (e) the protection of children from harm. (Rec 1)³

Licensing Boards

2.5 The determination of a liquor licence should remain in the hands of licensing boards composed of local authority councillors (Rec 2) whose meetings should be held as and when they are required and certain classes of business should be delegated to the clerk of the licensing board (Rec 9).

Licensing Forums

2.6 Every area should have a statutory licensing forum whose members will be drawn from a variety of backgrounds with an interest in the licensing system. They will keep the licensing system under review and advise the licensing board in relation to any matters of concern other than individual current licensing applications. The board should be under a duty to have regard to any advice given and where a board decided to ignore such advice or views, it should give its reasons for doing so. (Rec 10)

The Licence

2.7 The existing system of licences should be replaced by a system consisting of a premises licence authorising the sale or supply of alcohol in the named premises, and a personal licence authorising the person named in the licence to manage and to operate licensed premises and to sell or supply alcohol without supervision. (Rec 11)

2.8 An application for a premises licence should be accompanied by an operating plan or schedule setting out in detail the nature of the operations to be conducted in the premises, and by a layout plan setting out the precise location and extent of items such as display shelving, etc. (Rec 11)

³ (Rec *) relates to the relevant numbered recommendation from the Nicholson Committee – Review of Liquor Licensing Law in Scotland.

2.9 Once granted a premises licence should continue in force for an unlimited period without renewal unless it ceased to be used for the purpose for which granted. It would require variation in certain circumstances and could also be varied, suspended or revoked in the event of a complaint being upheld by a licensing board. (Rec 11)

2.10 A personal licence should be granted if the applicant is over 18, possesses a licensing qualification and has not forfeited a personal licence in the previous 5 years nor been convicted of any relevant offence. (Rec 11)

2.11 Legislation should authorise the making of regulations setting out standard conditions which must be attached to all premises licences. It should be open to the licensing board to modify or add to the terms set out in the operating plan. Such decisions will be subject to appeal. (Rec 12)

2.12 The present system of statutory permitted licensing hours should be abolished and replaced by a system under which there will be no statutorily prohibited hours; and actual opening hours will be those authorised, upon application, by a licensing board who must have regard to their general declared policy and the need to promote the licensing principles. (Rec 20)⁴

2.13 Procedural rules relative to proceedings before licensing boards should contain prescribed forms to be used by applicants and objectors, with those forms being standard in all licensing board areas. (Rec 23)

2.14 Lists of applications published in local newspapers should group the premises to which the applications relate by postcode number. (Rec 27)

Objectors & Observers

2.15 Objectors to a licensing application should no longer be required themselves to send their objection to the applicant. This should be undertaken by the licensing board. (Rec 28)

2.16 The list of statutory objectors should be confined to those individuals or organisations who are not normally involved in the licensing process but who may wish to object to the grant of a particular application. There should be a separate list of those with a continuing interest in the licensing process who may submit observations or representations regarding an application or applications. (Rec 31)

2.17 The following should be statutorily entitled to object to the grant of an application for a premises licence - (a) any persons who own, are tenants of, or reside in property situated in or near the neighbourhood of the premises to which an application relates, together with any body or organisation which represents, or bears to represent, people of the foregoing category; (b) a community council for the area in which the premises are situated; and (c) any body representing an established religion where that body owns or occupies property in or near the neighbourhood of the premises to which the application relates. (Rec 32)

2.18 The following should be entitled to submit observations or representations to a licensing board in respect of any application – (a) the chief constable; (b) the fire authority; and (c) any official of the local authority who, by reason of their office, has an interest in any aspect of an application. (Rec 34)

2.19 Even in the absence of objections or formal observations or representations a licensing board should be obliged to consider an application for a premises licence on its merits; and, if the board concludes that there are grounds for refusing the application, it should be entitled to take that course. (Rec 35)

⁴ Paul Waterson of the SLTA and Scott Landsburgh of the SGF, would like it noted that their organisations do not support the removal of statutory permitted hours.

2.20 There should be a general ground for refusing to grant a premises licence, namely that the operation of the premises for the sale or supply of alcoholic liquor would undermine the promotion of the licensing principles. The following should be grounds for refusal, namely (a) that the premises to which an application relates are not suitable or convenient for the sale of alcoholic liquor having regard to their location, their character and condition, the nature and extent of the proposed use of the premises, and the persons likely to resort to the premises; and (b) that, having regard to the type, number, size and capacity of licensed premises in the locality at the time when the application is considered, the grant of the application would be likely to undermine the promotion of the licensing principles. (Rec 36)

Licensing Board Policy

2.21 Licensing boards should be under a statutory duty to issue policy statements which give a broad indication of the policy which is likely to be adopted in relation to the operation of the licensing system within their respective areas. (Rec 37)

Guidance from Scottish Ministers

2.22 Provision should be made to enable Scottish Ministers to issue and revise guidance to licensing boards on the discharge of their functions; and licensing boards should have regard to such guidance when formulating or revising their own policy statements. (Rec 38)

Liquor Licensing Standards Officers

2.23 Licensing boards should employ persons to be known as Liquor Licensing Standards Officers whose functions will be to supervise and monitor the operation of the licensing system in a licensing board area. Those officers should have a statutory right of entry to all licensed premises. The main functions of liquor licensing standards officers should be to co-operate with license holders in order to assist compliance with terms and conditions attached to a licence and to report to the licensing board any persistent or serious cases of non-compliance. (Rec 39)

2.24 A procedure should be devised to enable licensing boards to hold a hearing for consideration of any complaint brought to their notice by a liquor licensing standards officer or by any person entitled to make observations or representations in respect of, or to object to, an application for a licence. (Rec 40)

Licensing Board Sanctions

2.25 Licensing boards should have available to them a range of sanctions in respect of premises licences. The available sanctions should range between a formal warning or admonition to revocation of a licence. (Rec 41)

2.26 Where a sanction involving closure of licensed premises for any period, or a reduction in authorised hours, has been imposed by a licensing board, and the premises licence holder concerned has marked an appeal against that decision, he or she should be entitled to apply to the local sheriff for interim suspension of the sanction pending disposal of the appeal. However, where interim suspension is not granted, the sanction should remain effective pending the determination of any appeal. (Rec 42)

National Licensing Forum

2.27 A national licensing forum should be established. Its members, appointed by the Minister for Justice or the Minister for Health, should be drawn from a wide range of relevant backgrounds. The forum should meet periodically under the chairmanship of a Minister and its task should be to keep licensing law and practice under constant review, and to offer advice to Ministers as to ways of dealing with emerging problems or difficulties. (Rec 47)

Appeals

2.28 An appeal against a decision taken by a licensing board should in future be heard by the sheriff principal. (Rec 48) All decisions taken by a licensing board, other than purely procedural ones, should be open to an appeal to the sheriff principal. (Rec 49). An appeal to the sheriff principal should proceed by means of stated case. (Rec 50)

Irresponsible Promotional Activities

2.29 There should be a standard condition attached to all premises licences to the effect that nothing must be done in connection with the business of the premises, whether by way of promotional advertising, by way of offering discounted prices, or in any other way, which encourages excessive consumption of alcohol and which thereby prejudices, or is likely to prejudice, the licensing principles. The board, where it is satisfied after a hearing that a breach has been established, should be entitled to impose an appropriate sanction. (Rec 58)

Alcohol & the Under 18s

2.30 Current prohibitions on the sale or supply of alcohol to persons under the age of 18 should be retained. The Scottish Executive should arrange for the introduction of a national proof-of-age card which would certify that the holder is of an age when he or she is entitled to purchase or to be supplied with alcoholic liquor in licensed premises. So far as is practicable that card should be incapable of forgery and should be readily available, free of charge. Licence holders and their staff should be entitled to refuse to serve a young person who cannot produce that proof-of-age card, but as appropriate they should be entitled to rely on any other official document such as a passport. (Rec 60)

Offences

2.31 Consideration should be given to the question whether the maximum penalties for the commission of offences under licensing law are set at an appropriate level. (Rec 61)

Police

2.32 The Licensed Premises (Exclusion of Certain Persons) Act 1980 should be amended to extend its scope to all licensed premises including in particular those which currently operate under an off-sales licence. Furthermore, consideration should be given to the introduction of a procedure whereby a licence holder can apply for an exclusion order where a relevant offender has been convicted of a relevant offence but an exclusion order has not been sought at that time. (Rec 64)

2.33 Any police officer should have a lawful right of entry into any premises in respect of which a premises licence is in force. (Rec 77)

2.34 In the interests of public safety, consideration should be given to providing the police with powers to close licensed premises when there is, or is likely to be, disorder either in or in the vicinity of those premises. (Rec 78) It should continue to be open to a constable of the rank of chief inspector or above to apply to a licensing board for an order, which is desirable in the interests of public order or safety, that specified premises should be closed to the public for such time of up to three hours as is specified in the order. (Rec 76)

CHAPTER THREE: ENCOURAGING COMMUNITY ENGAGEMENT

CHAPTER

3.1 The Group was given the task of considering the scope for better engagement and consultation at community level in the licensing process. It was clear from the meetings Ministers held with communities during the course of consultation on the Anti-social Behaviour Bill that there was a very real concern about under age drinking and that this was coupled with a concern about off-sales premises becoming a focal point for anti-social behaviour. It was therefore important to consider how the views of a local community could be fed into the licensing process to ensure that the licensing board were made fully aware of important local issues that should be taken into account prior to taking a decision to grant a licence and could also be made aware of problems arising after a licence has been granted.

3.2 It is important to point out that although off-sales premises or the streets outside a premises may become a focus for anti-social behaviour, this is not necessarily linked to a premises either selling alcohol to under-age drinkers or itself being the root cause of the problem. We acknowledge that the majority of licence holders act in a responsible manner and are themselves concerned to remove or reduce the incidence of anti-social behaviour in the vicinity of their premises.

3.3 We considered this issue both in terms of the range of interested parties who should have the opportunity to have their voices heard and in terms of simplifying the formal process to ensure this could be done easily and effectively.

3.4 In discussing the role of communities it became clear that although our starting point was off-sales the recommendations we might make in this area could not easily distinguish between on and off-sales. The recommendations that appear below therefore have, and are intended to have, wider application.

Widening Community Involvement

3.5 We discussed how we could ensure that a sufficiently wide range of interested parties would have the opportunity to take part in the licensing process. The Nicholson Report recommendation on new statutory local licensing forums would help to increase community involvement and would be an important step in allowing communities to comment on licensing board policy. In terms of the formal licensing process, the Nicholson Report does not consider that the process of objection as set out currently in the 1976 Act need change radically under a new scheme. The Report acknowledges shortcomings in the list of objectors in the 1976 Act and suggests changes to the list of those statutorily entitled to object in order to improve upon the current position.

3.6 In our view, whilst these changes would indeed be an improvement, we feel that this may not go far enough and could still result in uncertainty over whether individuals or community organisations with a legitimate interest would qualify as statutory objectors. Qualification would still hinge on interpretation e.g. of the words 'in or near' the neighbourhood of a licensed premises. It would also still be a matter of interpretation regarding bodies which 'represent or bear to represent' individuals.

3.7 We also considered the situation where individuals or bodies might not wish to object to an application but nevertheless would wish to make some comments or indeed to support the application. At present, the 1976 Act limits interested parties to making objections rather than representations. Whilst the facility to make written objections is important, it does emphasise an adversarial attitude in the system.

3.8 Under the proposals set out in the Nicholson Report, less formal routes for making views known could include both the new local licensing forums and also the proposed Liquor Licensing Standards Officers (LLSOs).

The former would allow communities to make comment on general board policy and the latter should allow mediation between community interests and licence holders to address any perceived difficulties at a lower level. However, we feel it is still appropriate as part of the formal system to allow representations to be made as well as objections.

3.9 We feel that it should be possible for any person or organisation to object or to make representations provided that they can demonstrate a real and material interest in making such objection or representation. We feel there should be a move to a more inclusive approach that recognises that a wide range of individuals and organisations may have a legitimate interest in the process. Whilst we recognise that community councils have an important role (and this is discussed further below), we also recognise that other community groups, including small *ad-hoc* groups formed to tackle a perceived local problem, should have an equal right to be heard.

3.10 In our view, the relevant provisions of the Civic Government (Scotland) Act 1982 provide a suitable model which could be adapted for use with applications for premises licenses under the proposed new regime. Annex A to this report sets out a suggested amended form of the relevant sections of the Act. This includes an amendment that refers to the need to demonstrate a '*real and material*' interest which would be necessary to ensure that frivolous objections could be rejected. We believe this model has the potential to be simpler, more effective and inclusive, to the overall benefit of the community.

3.11 The Nicholson Report concluded that statutory objections should be confined to those individuals or organisations who are not normally involved in the licensing process but who may wish to object to the grant of a particular application. Although we believe that anyone with a real or material interest should be able to object or make representations, we also consider that the legislation should list a number of statutory consultees. Consultees would be those individuals or bodies entitled to receive written notification of an application from the licensing board and this would operate in a similar way to the planning regime. Under planning law any person or body has the right to submit representations, including letters of support, and the planning authority will determine the relevance of the objection or representation. However, there are also statutory consultees eg, SEPA, the roads authority, Scottish Water, community councils, etc, to whom the planning authority must send copies of the application and invite comments. This is the kind of regime the Working Group would like to see in place for liquor licensing.

3.12 In the time available we have not been able to discuss who these statutory consultees, entitled to receive written notification, might be. However, as a starting point for further discussion, we make the following suggestions –

- any person owning or occupying property that is conterminous or within, say, 4 metres of the premises to which the application relates;
- the community council for the area in which the premises is situated;
- the chief constable;
- the fire authority; and
- relevant departments of the local authority, particularly environmental health, building control and, possibly, trading standards.

3.13 We also note that it will be necessary to consider an equitable means of dealing with applications to vary operating plans under the proposed new system. The system has to be workable and we acknowledge that a requirement to consult on what might be seen as minor adjustments eg to display areas, would be unduly onerous. More detailed consideration should be given to which types of variation should trigger consultation and which might simply be noted by the clerk. This should include reference to the materiality of the variation.

Recommendation

1. The scope of those able to object to a new application for a premises licence should be simplified and widened to anyone who can demonstrate a real and material interest and should include the right to make representations, using the relevant provisions of the Civic Government (Scotland) Act 1982 as a model.
2. Consideration should be given to the drawing up of a list of persons or bodies with whom licensing boards would be required to consult on applications. These persons or bodies would be known as statutory consultees and they would be able to submit both objections and representations on applications.
3. Consideration should be given to how to deal equitably with applications to vary an operating plan and under what circumstances the variations are requested. The scope for objections and representations to be made should be linked to the materiality of the proposed variation.

3.14 We recognise that, particularly in the absence of other organised groups in a local area, a community council is an important and well known focus for presenting the views of a local community. The role of the community council is to:

“ascertain, co-ordinate and express to the local authorities for its area the views of the community which it represents, in relation to matters for which those authorities are responsible, and to take such action in the interests of that community as appears to it to be expedient and practicable.” (*Local Government (Scotland) Act 1973*).

3.15 There is presently no statutory obligation for boards to notify community councils of forthcoming applications, although we believe that it is standard practice for boards to forward their agenda to the community council. We felt this had clear drawbacks since it left community councils with a relatively narrow window of opportunity in which to take any action. The Group therefore recommends that community councils should be included as statutory consultees to ensure that they are automatically sent a copy of an application at the outset without the need to make a request for such information.

3.16 This should improve the process to make it easier for community councils to respond and would also ensure that, in the absence of any other local interest, the community has still been formally notified of an application.

Recommendation

4. Community councils should be one of the statutory consultees recommended above.

Improving the Process

3.17 Having recommended a move to an alternative model to widen community involvement, we were able to build on this model in considering ways to improve the formal process. The Nicholson Report recommends that procedural provisions should be set out in secondary legislation and that prescribed forms should be agreed for both applicants and objectors. We agree with this approach and with the specific recommendation in the Report that, under the new system, licensing boards should take on responsibility for forwarding copies of objections and representations to applicants. We also agree with the maintenance of the requirement to advertise applications in the press and that these should be listed by postcode.

3.18 Under section 10(5) of the 1976 Act, and in accordance with the Nicholson Report, the existing system of neighbour notification would be maintained. This means that in the case of an application for the grant or provisional grant of a new licence, the applicant should give 3 weeks' notice in writing to every occupier of premises situated in the same building. This is in addition to the requirement to display a notice at the premises for 3 weeks prior to the relevant board meeting and for a list of applications to be published in local newspapers by the clerk.

3.19 We do not believe that the present system of neighbour notification operates successfully. Our recommendation above regarding statutory consultees is therefore designed to maintain notification of specified individuals and bodies but to place the onus on the licensing board to carry out that formal notification.

3.20 In addition, we feel that a notice displayed at the premises by the applicant would serve as a useful additional means to draw an application to the attention of the community. This notice, however, should be improved upon. We suggest it should be A3 in size and set out to a prescribed form containing certain minimum information. This should include the following:

- Licence applicant's name;
- Name and address of premises;
- Proposed hours of operation on each day of the week;
- Brief overview of the nature of business to be conducted at the premises;
- Specific arrangements for children;
- Information about how to make an objection or representation.

3.21 Annex B includes suggested forms which could be used for this statutory notice. However, the proposed National Licensing Forum should be asked to consider this issue in detail and recommend the prescribed forms to be used throughout Scotland. In addition, we believe that local authorities should provide sufficient web facilities for licensing boards so that it can become a mandatory requirement for boards to display application lists on their websites. This should be in place by 2005, in line with existing Government targets for public sector organisations to have all their transactions capable of being dealt with electronically on-line.

Recommendation

5. An A3 pro-forma notice should be displayed by the applicant outside the premises. The notice should take a recognised form (such as that set out in Annex B) and this form could be set out by the proposed National Licensing Forum.

6. It should become mandatory for licensing boards to display application lists on their websites by 2005.

Timescales

3.22 We also considered the timescales within which notices should be displayed and objections or representations made. We concluded that the timescales specified in the 1976 Act are confusing since, in both cases, they make reference to the day of the relevant board meeting. Notices are to be displayed 21 days before the meeting and objections received not later than 7 days before the meeting. These time limits have often been misunderstood and there is no clarity over the treatment of Sundays or public holidays.

3.23 For display of notices we recommend the Civic Government (Scotland) Act 1982 procedure requiring display for 21 days beginning with the date on which the application was submitted to the licensing board. For notification of objections and representations, we recommend (as set out in Annex A) that these should be made within 21 days of the day that public notice of the application is given (i.e. within 21 days of the applicant displaying the notice). In addition, a minimum of 7 days notice should be given to all parties of a board meeting where an application will be discussed.

Recommendation

7. There should be a requirement that a notice should be displayed at the premises for 21 days beginning with the date on which application is made. There should be a requirement for objections or representations to be made within 21 days of the applicant displaying the notice.

8. A minimum of 7 days' notice should be given to all parties of a board meeting where an application will be discussed.

Form of written objection or representation

3.24 The Nicholson Report recommends that prescribed forms for applicants and objectors should be available in electronic form and should be allowed to be submitted in electronic form. We believe this is essential in order to modernise the process. We believe that the means of notifying written objections and representations should be extended to fax as well as e-mail provided an acknowledgement of delivery is retained. It therefore also follows that licensing boards should be able to use fax and e-mail to notify the applicant of objections and representations.

Recommendation

9. Objections and representations could in future be notified by hand, post, fax or e-mail.

3.25 We considered the provisions in the 1976 Act which relate to late objections. That Act specifies that the board has the discretionary power to waive procedural failures and postpone consideration of an objection but only in relation to the grant and renewal of a licence. However, we feel that the existence of this power is relatively unknown, particularly to objectors.

3.26 In our view, there is a need for a clear and unambiguous process for procedural failures and late objections or representations. We recommend that the relevant provision covering late objections and representations should be adopted from the Civic Government (Scotland) Act 1982 with slight amendments as shown in Annex A. We also recommend that there should be a suitable provision to cover procedural failures by applicants, those making objections or representations, and clerks.

Recommendation

10. The late objection provisions of the Civic Government (Scotland) Act 1982 should be adopted for liquor licensing applications.

11. There should be suitable provision to cover procedural failures by applicants, those making objections or representations and clerks.

3.27 The Nicholson Report recommends a system of supervision and monitoring once a premises licence has been granted. LLSOs would be an integral part of that system. There would also have to be a system that

allows for complaints to be made after a licence has been granted. The Report does not attempt to address this in detail but suggests that a procedure should be established to allow complaints to be made to boards which would automatically trigger a hearing. Complaints could be made by LLSOs and by anyone statutorily entitled to object.

3.28 We believe it is important to acknowledge that there must be a role for communities to raise issues at an informal and formal level after licences have been granted and where a perceived problem arises. However, in our view, this aim will be met on an informal level by liaison between an LLSO and the local community and on a formal level by provision to make a formal complaint which must then be given an oral hearing.

Appearances before a Licensing Board

3.29 The Group spent some time discussing appearances before a board. It appears to be the case that the procedure used by boards can vary from area to area. Some boards may use a greater degree of formality than others and that formality can be intimidating for both applicants and objectors. It was noted that practices of adopting court like procedures did not necessarily help to reduce the intimidating atmosphere. Other problems appear to include scheduling of cases and a requirement for applicants and objectors to sit through an entire board meeting until their case is heard.

3.30 The Nicholson Report acknowledges that appearing before a board may be intimidating. We endorse the Nicholson recommendation that appropriate training should be provided to board members and this should include training on good and acceptable judicial behaviour. We believe further changes could be made to the process. For example, it could be preferable for boards to meet in a more informal setting. In addition, applicants and objectors should not be required to attend an entire meeting, reducing the time they have to spend away from their usual work or business.

3.31 We did not have time to make detailed recommendations in this area. However, we felt that it would be important, whilst acknowledging the importance of the decisions taken at board meetings which impact on a person's livelihood, to reduce rigid adherence to the formality of the present proceedings. There would be a need to ensure that both applicants and objectors feel relaxed and therefore capable of presenting their views to the best of their ability within a process that they understand and trust. We therefore recommend that the proposed National Licensing Forum should be tasked with producing specific guidance aimed at making the process of appearing before a board less intimidating. Such national guidance would also allow for greater consistency in approach by licensing boards across the country.

Recommendation

12. National Guidance should be issued by the proposed National Licensing Forum with the aim of making the process of appearing at a licensing board hearing less intimidating and more consistent.

Local Licensing Forums

3.32 The group has also considered, as far as possible within the timescale, the role of the proposed new local licensing forums and their relationship to licensing boards.

3.33 The Nicholson Report recommends that statutory local licensing forums should be established consisting of members drawn from a variety of backgrounds with an interest in the licensing system and that the board should be under a statutory duty to have regard to the views of the forum. Forums would provide an opportunity for more informal discussion of matters of local concern and are therefore welcome. We

endorse the Report's recommendations for membership of forums and their role. We refer briefly to the issue of off-sales and ethnic minority communities later in our Report but for the present we would recommend that the proposed local licensing forums include representation from ethnic minorities.

3.34 We are aware that various licensing forums have been set up in some parts of the country, on a voluntary basis. However, the success of these appears to be variable. In Clackmannanshire, a forum was established several years ago but it has not met over the last two years. The forum was established by the board who generally set the membership and agenda. A wide range of interests were invited to attend meetings and the Chair rotated between the trade, board and community representatives. In South Ayrshire, on the other hand, a forum is convened by the board, has had regular meetings and has organised a licensing conference. Edinburgh also operates a similarly successful forum with a wide range of interests represented. In South Lanarkshire there is no forum as such. Licensing focus groups do meet to discuss local issues but there is no formal link to the board. In Renfrewshire there is no formal forum but meetings are held every 6 months with the licensed trade and include police and planning interests.

3.35 We discussed the options of integrating the forum and board by, for example, allowing the chair of the board to act as chair of the forum and board members to be *ex-officio* forum members. Although this would have the benefit of ensuring regular communication between the two bodies, it was felt that this might risk the independence of the board. Any conflict of interest for the board should be avoided.

3.36 On the other hand forums need to be separately identifiable bodies to ensure that they act as an independent check within the system. We therefore feel that forums should be independent of boards. However, this would not change the position recommended in the Nicholson Report and, indeed, we strongly agree that boards should be under an obligation to meet with forums and to take their views into account.

Recommendation

13. The proposed local licensing forums should be independent of the licensing boards.

3.37 In addition, we recognised that it would be beneficial for members of local forums to undergo training to ensure a better understanding of the licensed trade and the licensing process.

Recommendation

14. Suitable training should be made available to the members of the proposed local licensing forums.

3.38 Chapter 4 of the Report includes discussion of the role of LLSOs. We also considered the relationship of LLSOs to the forums. It was considered that there should be a 'close relationship' and that it would be preferable for at least one LLSO to be available to attend each forum meeting. We see this relationship as pivotal if the LLSO is to successfully carry out a mediation role.

Recommendation

15. The proposed liquor licensing standards officers should actively participate in the local licensing forums, attending meetings and presenting the forum with relevant information.

CHAPTER FOUR: MANAGEMENT AND ENFORCEMENT
MECHANISMS

CHAPTER

Nicholson on Management and Enforcement

4.1 As part of its work, the Nicholson Committee commissioned research from Reid Howie Associates (a) to review existing literature relating to initiatives aimed at tackling alcohol-related crime and disorder; and (b) to carry out an audit of existing initiatives in Scotland. The research report addressed the question of illegally purchased alcohol and concluded that grocery stores were more prepared to sell to minors than other types of outlet. On the other hand, the report noted that factors most associated with lower level of sales to minors were being part of a chain, being in membership of a trade association and having a high proportion of income from alcohol sales.

4.2 The Public Order Sub Group of the Nicholson Committee pointed out that most independent off-sales operated in a responsible manner and would never knowingly supply alcohol illegally. Nonetheless the police had little doubt that proprietors and their staff sold alcohol to "under-agers" (or persons acting as their agents) knowingly, willingly and with a complete disregard for the consequences. The Sub Group felt that the motive for this, on the part of the proprietors, was probably financial, while the staff, who were often local youngsters themselves, might be doing a favour for their friends and neighbours.

"Very often the stock carried by 'suspect' establishments and the way it is marketed is quite clearly aimed at youngsters with cheap, fortified wines, strong cider and 'alcopops' being very much to the fore" (para 5.16)

4.3 The Sub Group considered why dedicated off-sales and licensed grocers were most frequently used by young people to obtain alcohol. They concluded that

- it was less likely that family grocers would have formal training in place to prevent illegal sales; and
- a community shopkeeper may be much more vulnerable to pressure, possibly including threats of violence, exerted by groups of youths wishing to obtain alcohol.

4.4 The Sub Group also examined reasons why unscrupulous off-licence operators felt they could sell to under age persons. Certainly the level of enforcement activity, in terms of successful prosecutions – 905 licensing offences in 2001 compared with only 100 convictions – (*Scottish Executive Statistical Bulletin: Criminal Justice Series, Liquor Licensing in Scotland, 1998-2002, published May 2003*) – does not reflect the true scale of the problem. This may be because of police priorities, the complexity and resource intensive nature of collecting evidence, delays in getting a case to court, or the small level of fines with no deterrent value when set against the potential profits to be made.

4.5 The Scottish Licensed Trade Association (SLTA) is concerned at this situation *"We believe that to hold a liquor licence of any type is a privilege and with that privilege goes a responsibility, not only to our customers but to society generally and to the rest of the trade"* (SLTA Oral Evidence to Nicholson)

4.6 We address these issues later in this chapter. We do endorse, however, the views of the Association of Chief Police Officers in Scotland (ACPOS) that it is important that those who take responsibility for the management of licensed premises are socially aware and have knowledge of the relevant legislation relating to their employment. Members of the public have the right to expect a professional approach in the management of premises; they have the right to a safe environment within and around those premises; and

they have the right to expect licence holders to assist in the prevention and detection of crime. (ACPOS Oral Evidence to Nicholson)

4.7 We are also aware that there is a particular issue faced by off-sales licence holders of an ethnic minority background. Many Asian businesses feel that they are more likely to suffer racial harassment than other small shopkeepers. In central Scotland, we noted, from information provided by RAHMAS (the monitoring agency for racial attacks and harassment multi-agency strategy) that 50% of all racial attacks and harassment were taking place at shops and businesses. As almost all their shops are small family businesses employing only family members, they have fewer resources to deal with anti-social behaviour in and around their premises. In general many members of the Asian community feel that police attitudes towards their complaints, on the whole, are unsympathetic. However the police do not accept that this is a wholly accurate representation of the situation. Indeed, it is accepted by all concerned that the police service has invested heavily in this area with a view to improving officers' awareness and skills in relation to diversity issues.

4.8 We have been unable, in the time available to us, to address this issue in detail but we would see a place for all those involved in enforcement concerning licensed premises to look at the problems faced by those because of their ethnicity and consider what work could be undertaken to tackle what they clearly see as a very real problem.

4.9 In looking at the problems which are perceived as often being associated with off-sales, we discussed a wide range of management and enforcement mechanisms including those already in use, those suggested in the Nicholson Report and those proposed in the Anti-Social Behaviour Bill.

4.10 In this chapter we have considered methods to curb the purchase of alcohol by those under the age of 18. We have had regard to how the present powers available to the police and other agencies are used and considered what changes, if any, are necessary. Finally, we have given some thought to the Nicholson Committee's recommendation on liquor licensing standards officers and the part they would play in protecting communities.

Under-age Drinking

4.11 All members of the group have acknowledged that this is a complex problem that cannot be addressed by liquor licensing alone. At present it is not unlawful for children over the age of 5 years to consume alcohol. What the law in general prohibits is the sale or supply in licensed premises of alcohol to, or the purchase of alcohol (or attempt to purchase alcohol) by, those who are under the age of 18. The Nicholson Committee recommends that the current prohibitions on the sale or supply of alcohol to persons under the age of 18 should be retained with the exception of a person aged 16 or 17 who should be entitled in licensed premises to purchase beer or wine for consumption with a meal.

4.12 In looking to prevent those under 18 being able to purchase alcohol, the Nicholson Report also recommended the introduction of a national proof of age card which would certify that the holder is of an age when he or she is entitled to purchase or to be supplied with alcoholic liquor in licensed premises.

4.13 We noted with interest the work already taking place with the Young Scot Card, which is available to anyone between the ages of 12 and 25 and operates as a discount card with information and advice services. Of particular interest is the Dialogue Youth initiative. Dialogue Youth is a partnership established between COSLA, Young Scot and all 32 local authorities. As part of the initiative, each council localises the Young Scot Card in order that it can be used to access a range of services provided by them. Across Scotland the card will be made available, free of charge, to every young person aged 12 to 18. Several local authorities have expressed interest in working with Young Scot to extend the range to age 25, which is the generally accepted definition of a "young person". We have been pleased to hear that the card has recently been accredited by

the British Retail Consortium (BRC) 'Proof of Age Standards Scheme' (PASS). This is a scheme promoted by the BRC to supply storeowners and shop workers with a reliable and accurate information method on which to base a decision on whether to allow a purchase. It is expected that within a year almost all Dialogue Youth Units will be issuing co-branded local authority/Young Scot cards bearing the PASS hologram.

4.14 Proof of age schemes are often brought into the debate on national identity cards. We are clear that the issues are similar but separate and we do not wish to enter into that debate. We offer no comment on the merits or otherwise of a national identity scheme. However, we do agree that there is a need for a mechanism to help off-sales licence holders prevent under-age purchase and the most obvious tool is a proof of age card. We therefore support the Nicholson proposal for a national proof of age card. Such a card should be issued for those aged 12 and upwards.

4.15 We also believe that to ensure the licence holder continually uses such a scheme, there needs to be a reassurance that any age verification system contains reliable, accurate information. We prefer the option of a single scheme adopted nationally. However any scheme should use a secure validation process to prevent forgery, especially by downloading from the Internet. To achieve this we would like to see any card used being kitemarked with a hologram.

Recommendation

16. We support the Nicholson recommendation for a Government-accredited national proof of age card and believe that the co-branded local authority/Young Scot card issued through Dialogue Youth would be suitable for this purpose if it could be extended up to the age of 25 in each local authority area. Ministers should consider the potential of the Dialogue Youth card. However, any card that is used for proof of age purposes should be holographic kite-marked and display the person's age.

4.16 Our discussions on proof of age cards have led us to the conclusion that such cards are most effective if they are used in conjunction with a continuous No Proof No Sale initiative. The Association of Convenience Stores has been promoting a No Proof No Sale initiative for some time in England and Wales and has worked with existing card providers including the Portman Group. In addition two Early Day Motions were tabled at Westminster during 2003 which gathered support from MPs.

4.17 A No Proof No Sale initiative is seen as a means of addressing violence and intimidation towards licence holders and their staff as well as a means to reduce under-age sales and therefore under-age drinking.

4.18 In addition, anecdotal evidence suggests that in some parts of Scotland there may already be voluntary schemes in existence which have the blessing of local authorities, the police and the trade.

4.19 In our view, it makes sense to promote consistency throughout the country and for this to be promoted at the highest level. We therefore recommend adoption of a national initiative endorsed and promoted by Scottish Ministers.

4.20 In adopting such a policy the types of proof required would need to be specified. We believe these should be a national proof of age card, a passport or the new style of photographic driving licence.

Recommendation

17. Scottish Ministers should endorse and promote a No Proof No Sale initiative for Scotland. Proof should be restricted to a single widely accepted Proof of Age card, a passport and the new style photographic driving licence.

4.21 Test purchasing has been a feature in England & Wales for several years in relation to tobacco and fireworks, but was only recently introduced in relation to alcohol by the Criminal Justice and Police Act 2001. The use of test purchasing in England & Wales is subject to strict guidelines and has involved the photographing of witnesses prior to the 'purchase' and the recording of all conversations. The intention of these measures is that the young person's testimony in court might not be required. However, the position in Scotland regarding evidence is different.

4.22 In Scotland, test purchasing is a matter for the Lord Advocate. The Lord Advocate has already authorised a carefully controlled pilot in relation to the test purchasing of tobacco products by children - the pilot is still ongoing but the results are expected by February 2004. The Lord Advocate does not wish children to give evidence in court unless it is absolutely necessary, but has said that he will look carefully at the current pilot in relation to the test purchasing of tobacco to consider whether a similar approach would work in relation to the sale of alcohol.

4.23 We understand the concerns around test purchasing, which would technically place young persons in a position of being asked to commit an offence and act as an 'agent provocateur'. There is a concern that this would not be in the best interests of the young person as they may be required to give evidence in court, with the attendant stress this entails. The possibility of subsequent intimidation and physical danger at the time of the test purchase would also require careful consideration.

4.24 While we are aware, from the Reid Howie research, that there is no evidence to suggest that test purchasing in England & Wales has impacted on the level of under-age drinking, we see an important role for the use of test purchasing as a way to measure the compliance of licence holders with the legislation. Such 'integrity testing' allows those bodies responsible for the licensing system to gain a picture of the ease with which under-age purchasing can take place within a given area. We acknowledge the present difficulties with regard to prosecution but believe that the information gathered can be used positively in encouraging greater diligence.

4.25 The legal position regarding the purchase of alcohol is different from that relating to the purchase of tobacco. It is not a criminal offence on the part of an under-age person (aged 16 in the case of tobacco) to purchase tobacco. The offence is committed by the person selling the tobacco. In the case of alcohol, the offence is committed by both the seller and the young person (aged under 18 in this case). The under-age person would also be committing an offence if they attempted to purchase alcohol. If the Lord Advocate is disposed to look favourably on the use of test purchasing for alcohol this could be achieved either through a change in primary legislation or by the Lord Advocate issuing a policy directive indicating that he would not prosecute under-18 year olds who were involved in test purchasing. We therefore await the results of the Lord Advocate's consideration of this matter with interest.

4.26 We also believe that for such a system to be fair there needs to be an environment clearly to support the licence holder in making the decision to sell. Any more widespread introduction of test purchasing, therefore, needs to be accompanied by measures such as proof of age cards.

Recommendation

18. We are attracted to the idea of test purchasing within an environment which offers support to the licence holder (such as proof of age cards). However, we recognise that this is a matter for the Lord Advocate and we recommend that, in considering the results of the current pilot in relation to the test purchasing of tobacco products, he should consider whether a similar approach would work in relation to the sale of alcohol.

Police Powers

4.27 The 1976 Act permits the police at any time to enter and inspect any licensed premises other than premises holding an off-sales licence. The police may only enter premises with an off-sales licence if they have reasonable grounds for believing that an offence has been or is being committed on those premises. We are aware that of those responses to the consultation paper on anti-social behaviour that addressed this question, all supported the Nicholson recommendation that this distinction should not continue and that the police should have the same access to all licensed premises.

4.28 Under the 1976 Act, the police can ask a licensing board, in the interests of public order or safety, for a temporary Restriction Order, seeking the closure of individual premises or a group of licensed premises. In addition, boards also have the power, when dealing with a complaint of public nuisance or disorder, to make afternoon, evening or Sunday Restriction Orders, limiting the permitted opening hours. Such orders are not applicable to off-sales licensed premises or off-sale parts of other licensed premises. The police in practice have been able to achieve rapid closure of premises in serious incidents of disorder under common law powers. However, we support the Nicholson recommendation that in the interests of public safety, the police powers of closure should be updated.

Recommendation

19. We agree that the police should have the same access to all licensed premises. We also agree that the police powers of closure should be updated.

4.29 For England & Wales the new Licensing Act 2003 has added an offence of knowingly to keep or allow to be kept, on relevant premises, any unlawfully imported goods or goods on which duty has not been paid. The categories of those who may commit the offence are:

- any person who works at the premises in a capacity that gives them the authority to prevent those goods from being kept on the premises;
- a premises licence holder or designated premises supervisor;
- an officer or member of a club who is present at the time when the goods are kept on the premises and who has authority to prevent them being so kept; and
- a premises user who has given a temporary event notice in respect of those premises.

A court, which convicts a person of this offence, may order the confiscation of the goods in question and their containers, which may then be either destroyed or dealt with as the court orders. We believe the inclusion of such a clause in Scotland's licensing legislation would strengthen the ability to deal with an illegal source of alcohol. This may then have a beneficial impact on associated problems such as under-age drinking.

Recommendation

20. The clause concerning the 'Keeping of smuggled goods' in the Licensing Act 2003 is worthy of inclusion in a licensing bill for Scotland.

Anti-social Behaviour

4.30 The Licensed Premises (Exclusion of Certain Persons) Act 1980 provides that courts may make an order prohibiting those found guilty of violence or threatening violence on licensed premises from entering those premises or any other specified premises for a specified period. The order may be made for a minimum of 3 months and not more than 2 years. The purpose of the Act is both to protect the licence holder, their staff and customers from future violence from the same source and to deter potential troublemakers.

4.31 Off-licences are currently exempt from the Act. We agree with the Nicholson recommendation that exclusion orders should be extended to all licensed premises including off-sales. In addition, we recommend a further amendment to the 1980 Act to allow for exclusion in respect of disorder in 'or associated with' a licensed premises. This would allow action to be taken in instances where the anti-social behaviour takes place at the entrance to or immediately outside a licensed premises as customers enter or leave. It could be particularly effective in targeting the perception by some communities that off-licences can become a focus for anti-social behaviour, much of which may take place outside the premises.

4.32 We also considered that the existence of the present power to make exclusion orders is not as well known as it might be and the existing powers should be brought to the attention of prosecutors, judges and justices. This could be done by the provision of guidance or training.

Recommendation

21. The Licensed Premises (Exclusion of Certain Persons) Act 1980 should be amended to allow exclusion for disorder in 'or associated with' a licensed premises. As a stop gap measure, appropriate guidance or training should be provided to prosecutors, judges and justices to raise awareness of the existence of the powers to make such orders.

4.33 In considering the position of the community store we noted that the retailer/licence holder and their staff frequently face threatening and abusive behaviour. Such circumstances are making it difficult to recruit and maintain staff, consequently threatening the viability of stores. We understand that such behaviour can often follow a refusal to sell alcohol. We are therefore keen to see the use of Anti-Social Behaviour Orders (ASBOs) as one of a number of measures to tackle such problems.

4.34 ASBOs were introduced by the Crime and Disorder Act 1998. They are preventative orders designed to protect individuals from further anti-social behaviour that causes or is likely to cause alarm or distress. Breach of an order is a criminal offence punishable by a fine or imprisonment (up to 5 years on indictment). Local authorities and registered social landlords, in consultation with the police, can apply for ASBOs. Interim orders were introduced in 2003 and provide more immediate protection to individuals and families from anti-social behaviour.

4.35 We have noted that the Anti-Social Behaviour (Scotland) Bill will extend ASBOs to 12-15 year olds and introduce a number of reforms to improve their effectiveness including introducing a statutory power of arrest for breaching an order. To enable such orders to be effective for the licence holder it is important that they are aware of who to go to and how they can apply for such an order. We believe it is also important that the licence holder is kept informed of how any request is being progressed. In order to achieve this we feel that there is a need for a dedicated section within the local authority with the knowledge and skills to deal with applications for anti-social behaviour orders. Many local authorities have already established dedicated Anti-Social Behaviour teams mostly, but not exclusively, within their housing departments and are being encouraged to do so through Scottish Executive funding. We would similarly encourage those who have not to consider adopting this approach.

4.36 The ASB team is best placed to give guidance to licence holders on how to go about requesting the local authority to apply for an ASBO. Indeed, we feel that such teams should be asked to produce guidance for licence holders and others on this matter and, further, that they should keep the person requesting the order informed of its progress.

Recommendation

22. There is a need for a dedicated section, located within local authorities, with the knowledge and skills to deal with applications for anti-social behaviour orders. Anybody implementing the ASBO should keep the person requesting the order informed of its progress. Guidance should be made freely available to the licence holder on what is needed and how to go about applying for an ASBO.

4.37 The police already have the power under The Crime and Punishment (Scotland) Act 1997 to confiscate alcohol from anyone reasonably suspected to be under 18, whom they find in a public place. The police may also require that person to supply their name and address.

4.38 The police have similar powers to seize and dispose of alcohol from a person over 18 who has supplied or intends to supply the alcohol to a person under 18. The legislation does not require that alcohol containers be open and in effect provides police with the power to seize 'carry-outs'. Again the police officer can require that person to supply their name and address. We are aware that the police consider the 1997 Act to be one of the most effective pieces of legislation to deal with under age drinking and public disorder.

4.39 Local authorities also have the power to draw up byelaws, on the approval of Scottish Ministers, which prohibit drinking in designated public areas under the Local Government (Scotland) Act 1973. To date, 27 Councils across Scotland have such byelaws, covering more than 400 towns and villages, together with the built up areas within the cities of Glasgow, Dundee and Aberdeen.

4.40 We have been made aware of a concern that has arisen since the inception of the byelaws. For the majority of byelaws the relevant offence is to 'consume alcohol' and the charge must be proved beyond reasonable doubt and not inferred from the circumstances e.g. being in possession of a half-empty beer bottle. This means that the power only exists to seize the alcohol in the container from which it was being consumed at that specific time. It does not extend to taking possession of the 'carry-out', opened or otherwise, irrespective of any obvious intended consumption. It has been successfully argued that the charge cannot be substantiated unless the alcohol is seen being consumed. A number of police officers have commented that in practical terms the offence is therefore more difficult than it should be to prove.

4.41 South Ayrshire Council has introduced a byelaw which states: "*... any person who consumes alcoholic liquor in a designated place or is found to be in possession of an open container in a designated place shall be guilty of an offence*". We consider that this is a more effective means of tackling public drinking through byelaws. We therefore recommend that it could form the template for such byelaws in future.

Recommendation

23. The Executive should consider producing a new model byelaw on public drinking, using South Ayrshire's present byelaw as a template. It should be publicised on the basis that each Council should consider whether the byelaw would be useful in their area.

4.42 We have been concerned at the number of occasions we noted in the consultation responses to the Anti-Social Behaviour Bill that there was a public perception of a lack of police enforcement or action. Additionally, the Reid Howie research shows clear evidence that high profile policing around licensed premises is associated with a reduction in crime rates. Although acknowledging the complicated task Chief Constables face in allocating resources, we would ask that they give consideration to the priority their forces give in responding to the problems generated by anti-social behaviour in the vicinity of off-sales premises.

Recommendation

24. Chief Constables should give consideration to the priority their forces give in responding to the problems generated by anti-social behaviour around off-sales premises.

Business Rates

4.43 We considered whether it would be possible to use business rates as an incentive to smaller local shops not to sell alcohol. However, on closer examination, we concluded that the economic benefits of such a proposal were unlikely to be sufficiently attractive to encourage shop owners to participate in such a scheme. We have decided, therefore, not to pursue this proposal.

Liquor Licensing Standards Officers

4.44 The Nicholson Committee recommends that licensing boards should employ persons to be known as Liquor Licensing Standards Officers (LLSOs) whose functions would be to supervise and monitor the operation of the licensing system in a licensing board's area. These officers would have a statutory right of entry to all licensed premises and their main functions would be to co-operate with the licence holder in order to assist compliance with terms and conditions attached to a licence and to report to the licensing board any persistent or serious cases of non-compliance.

4.45 We support the remit as set out in the Nicholson Report. However, we also wish to emphasise that the LLSO should have an educational role and should be engaged in mediation, for example between licence holder and the local community, to resolve issues at the lowest local level.

4.46 In effect, therefore, LLSOs would act through both compliance and enforcement programmes. We noted with interest the Nicholson Public Order Sub Group's consideration of the system in British Columbia, where the essential principle was one of voluntary compliance. Licence holders receive educational material at the time of licensing and there is ongoing communication with LLSOs through the inspection programme. If a licence holder fails to comply with the Act, or with regulations, or with the terms and conditions of the licence, the licensing authority may commence enforcement action against the licence holder.

4.47 The Nicholson Report recommended that licensing boards should employ LLSOs. However, licensing boards do not employ staff and the clerks to the boards are local government officers. In considering the relationship between the LLSO and the board, we have come to the conclusion that this should be at arm's length. The LLSO should stand in the same relationship to the board as other public service officials, such as the police, trading standards or building control officers. This would mean that LLSOs should be employees of the local authority rather than the board.

4.48 We agree with the Nicholson Report that the proposed National Licensing Forum should give consideration to the role of LLSOs and to their effective liaison with those other officers who are entitled to enter and to inspect licensed premises. In such circumstances, we believe a robust training and accreditation scheme with clear job descriptions and work remit would help establish the separation between the licensing board and the LLSOs.

4.49 To achieve this we would like to see the proposed National Licensing Forum produce a job description and specification for the role, which should be used as a national template to ensure consistency across the country. Included in the specification should be qualification requirements.

4.50 We believe consideration should be given to making diversity and racial awareness training an essential component of the training made available to LLSOs. This should help to build bridges which would ensure

successful communication leading to better engagement and a mutually beneficial relationship between the LLSOs and the many licence holders of ethnic origin.

Recommendation

25. Liquor licensing standards officers (LLSOs):
- should have an educational and mediation role in addition to their monitoring role;
 - should be independent of the licensing boards;
 - should be employed by the local authority rather than the licensing board;
 - should have a job description and specification which follows a national template produced by the proposed National Licensing Forum and which includes minimum qualifications; and
 - should undertake training including diversity and racial awareness training.

Binge Drinking & Irresponsible Promotions

4.51 We share the Nicholson Committee's concern about 'binge drinking', not only because of the potentially harmful effects for health for those who engage in excessive drinking but also because it can frequently be the trigger for behaviour which is entirely undesirable and unacceptable for the community at large.

4.52 We believe that price plays a part in encouraging excessive drinking and in particular irresponsible promotions, usually accompanied by deep price discounting. We are aware of the present schemes adopted by licensing boards to discourage deep price discounting in the trade and accept that those in operation at present are not applicable to off-sales. Due to the limits of our remit and the tight reporting deadline to which we have been working, we were unable to explore this issue further. However, we wish to register our concerns about binge drinking and would ask the Scottish Executive to consider what measures it might take to address this anti-social practice and to prevent irresponsible promotions.

Recommendation

26. The Scottish Executive should consider what measures it might take to address binge drinking and prevent irresponsible promotions.

Training

4.53 We fully support the Nicholson recommendation that a personal licence applicant should possess a recognised licensing qualification and that all who work in licensed premises should be encouraged to undertake appropriate training. We believe that such qualifications and appropriate staff training play an important part in ensuring the maintenance of a responsible approach to the sale of alcohol by the licence holder and their staff.

4.54 We noted, from the report of the Nicholson Public Order Sub Group, that training courses for servers have led to "significant improvements". In British Columbia, for example, the "Serving it Right" training programme consists of two study programmes, one to be completed by the licence holder and the other by servers. The programmes aim to educate participants on their legal rights, responsibilities and liabilities and to provide techniques intended to prevent problems related to alcohol consumption. All licence holders, managers and employees must successfully complete the relevant parts of the programmes, with the licence holder being responsible for ensuring that their employees are trained. Failure to complete the programme by licence holders or employees is dealt with by way of increasing fixed penalties. These range from a one day

suspension of the licence and a \$1,000 fine on the first occasion to a 20 day suspension and increased fine by the third contravention.

4.55 In ensuring that the knowledge gained by such a qualification remains current we see a place for the personal licence holder to be obliged to take refresher training periodically, for example, every 5 years. Failure to undertake or complete such training should lead to the suspension of the licence.

Recommendation

27. Training should be mandatory for personal licence holders and appropriate on site training provided for all other employees with refresher training being undertaken every 5 years. Failure to undertake or complete refresher training should lead to licence suspension.

Sanctions Available To Boards

4.56 We regard the present system of sanctions as too blunt an instrument. We would like to see a graduated system of penalties introduced. We are in agreement with the Nicholson proposals that licensing boards should have available to them a range of sanctions to enable them to deal appropriately with cases where there has been a failure to comply with the terms and conditions of the licence. In determining the appropriate sanction, licensing boards should consider what is necessary in order to promote the licensing principles. The available sanctions should range between a formal warning or admonition to revocation of a licence.

4.57 As a starting point, we saw merit in the approach operated by the police in Glasgow. Here an informal warning is followed by a Yellow Card, where the licence holder receives a warning from a senior officer. If problems persist this leads to a Red Card, where information is transmitted by the police to the licensing board, who take a decision on revoking the licence. This type of graduated approach may have merit. Due to time constraints we have not been able to develop a detailed model but would recommend that the Executive explores this option.

Recommendation

28. Ministers should look to implement a graduated penalties system and any such system should come with guidance to the licensing board on its operation.

Interim Suspension

4.58 The Nicholson Committee recommended that where a sanction involving closure of a licensed premises for any period, or a reduction in authorised hours, has been imposed by a licensing board, and the premises licence holder concerned has marked an appeal against that decision, he or she should be entitled to apply to the local sheriff for interim suspension of the sanction pending disposal of the appeal. However, where interim suspension is not granted, the sanction should remain effective pending the determination of any appeal. We have assumed that the sheriff will make a decision with reference to the licensing principles.

4.59 We support the Nicholson Committee's wish to tackle those licence holders who abuse the appeals process in order to continue trading. However, we acknowledge that the loss of a licence even for a short while could be devastating to a business and to a community when it ultimately leads to the closure of a corner shop. We therefore propose that the closure of a premises would not take place until a hearing regarding the interim suspension has been held. It would however be incumbent on the licence holder to apply for such a hearing. If they did not, closure would take immediate effect.

Recommendation

29. In respect of the appeals process, as an alternative to the Nicholson recommendation which would see immediate closure prior to a hearing on interim suspension by the Sheriff Principal, the sanction should not begin until the hearing regarding the interim suspension has taken place.

Financial Implications

4.60 In considering some of the detailed implications of the proposed new licensing system recommended in the Nicholson Report, we have given some attention to the financial implications of the proposals. There are a number of areas where additional costs can be expected to arise under this new system, including the following:

- any extension of the Dialogue Youth card up to the age of 25;
- the cost of training and employing LLSOs;
- the cost of providing training to licensing board and licensing forum members;
- the cost of establishing and running the proposed National Licensing Forum.

4.61 We are not convinced that the full costs of the new system will be recovered increases in licensing fees, as recommended by the Nicholson Report. We have not had time to undertake a detailed estimate of costs but the licensed trade is very concerned at the likely size of fee increases if the costs of the new regime are to be fully recovered in this way. We therefore recommend that the Executive should undertake financial modelling to determine the extent to which costs can be recouped through licensing fees and should make provision in the local government finance settlement to reimburse councils for the additional costs they will face.

Recommendation

30. The Executive should undertake financial modelling to determine the extent to which costs can be recouped through licensing fees and what additional provision should be made in the local government finance settlement.

Recommendations

The Group is in broad agreement with the proposed licensing system envisaged by the Nicholson Committee and set out in its recommendations.

The Group supports the Minister for Justice's statement that there is little or no argument for any premises to routinely sell alcohol throughout the day and night.

Our recommendations are as follows -

Communities

1. The scope of those able to object to a new application for a premises licences should be simplified and widened to anyone who can demonstrate a real and material interest and should include the right to make representations, using the relevant provisions of the Civic Government (Scotland) Act 1982 as a model.
2. Consideration should be given to the drawing up of a list of persons or bodies with whom licensing boards would be required to consult on applications. These persons or bodies would be known as statutory consultees and they would be able to submit both objections and representations on applications.
3. Consideration should be given to how to deal equitably with applications to vary an operating plan and under what circumstances the variations are requested. The scope for objections and representations to be made should be linked to the materiality of the proposed variation.
4. Community councils should be one of the statutory consultees recommended above.
5. An A3 pro-forma notice should be displayed by the applicant outside the premises. The notice should take a recognised form (such as that set out in Annex B) and this form could be set out by the proposed National Licensing Forum.
6. It should become mandatory for licensing boards to display application lists on their websites by 2005.
7. There should be a requirement that a notice should be displayed at the premises for 21 days beginning with the date on which application is made. There should be a requirement for objections or representations to be made within 21 days of the applicant displaying the notice.
8. A minimum of 7 days' notice should be given to all parties of a board meeting where an application will be discussed.
9. Objections and representations could in future be notified by hand, post, fax or e-mail.
10. The late objection provisions of the Civic Government (Scotland) Act 1982 should be adopted for liquor licensing applications.
11. There should be a suitable provision to cover procedural failures by applicants, those making objections or representations and clerks.

12. National Guidance should be issued by the proposed National Licensing Forum with the aim of making the process of appearing at a licensing board hearing less intimidating and more consistent.
13. The proposed local licensing forums should be independent of the licensing boards.
14. Suitable training should be made available to the members of the proposed local licensing forums.
15. The proposed liquor licensing standards officers should actively participate with the local licensing forums, attending meetings and presenting the forum with relevant information.

Enforcement

16. We support the Nicholson recommendation for a Government accredited national proof of age card and believe that the co-branded local authority/Young Scot Card issued through Dialogue Youth would be suitable for this purpose if it could be extended up to the age of 25 in each local authority area. Ministers should consider the potential of the Dialogue Youth card. However, any card that is used for proof of age purposes, should be holographic kite-marked and display the person's age.
17. Scottish Ministers should endorse and promote a No Proof No Sale initiative for Scotland. Proof should be restricted to a single widely accepted proof of age card, a passport and the new style photographic driving licence.
18. We are attracted to the idea of test purchasing within an environment which offers support to the licence holder (such as proof of age cards). However, we recognise that this is a matter for the Lord Advocate and we recommend that, in considering the results of the current pilot in relation to the test purchasing of tobacco products, he should consider whether a similar approach would work in relation to the sale of alcohol.
19. We agree that the police should have the same access to all licensed premises. We also agree that the police powers of closure should be updated.
20. The clause concerning the 'Keeping of smuggled goods' in the Licensing Act 2003 is worthy of inclusion in a licensing bill for Scotland.
21. The Licensed Premises (Exclusion of Certain Persons) Act 1980 should be amended to allow exclusion for disorder in 'or associated with' a licensed premises. As a stop gap measure, appropriate guidance or training should be provided to prosecutors, judges and justices to raise awareness of the existence of these powers to make such orders.
22. There is a need for a dedicated section, located within local authorities, with the knowledge and skills to deal with applications for Anti-Social Behaviour Orders. Anybody implementing the ASBO should keep the person requesting the order informed of its progress. Guidance should be made freely available to the licence holder on what is needed and how to go about applying for an ASBO.
23. The Executive should consider producing a new model byelaw on public drinking, using South Ayrshire's present byelaw as a template. It should be publicised on the basis that each Council should consider whether the byelaw would be useful in their area.

24. Chief Constables should give consideration to the priority their forces give in responding to the problems generated by anti-social behaviour around off-sale premises.
25. Liquor licensing standards officers (LLSOs):
 - should have an educational and mediation role in addition to their monitoring role;
 - should be independent of the licensing boards;
 - should be employed by the local authority rather than the licensing board;
 - should have a job description and specification which follows a national template produced by the proposed National Licensing Forum and which includes minimum qualifications; and
 - should undertake training including diversity and racial awareness training.
26. The Scottish Executive should consider what measures it might take to address binge drinking and prevent irresponsible promotions.
27. Training courses should be mandatory for personal licence holders and appropriate on site training provided for all other employees with refresher training being undertaken every five years. Failure to undertake or complete refresher training should lead to licence suspension.
28. Ministers should look to implement a graduated penalties system and any such system should come with guidance to the licensing board on its operation.
29. In respect of the appeals process, as an alternative to the Nicholson recommendation which would see immediate closure prior to a hearing on interim suspension by the Sheriff Principal, the sanction should not begin until the hearing regarding the interim suspension has taken place.
30. The Executive should undertake financial modelling to determine the extent to which costs can be recouped through licensing fees and what additional provision should be made in the local government finance settlement.



A Draft amendment of the Civic Government (Scotland) Act 1982
Sub-para. 3 of schedule 1

ANNEX

Amended to show a possible adaptation for objections and representations for a premises licence in a new licensing Act.

Objections and representations

3(1) Any objection or representation relating to an application for the grant of a premises licence or the variation of an operating plan shall, subject to sub-paragraph (2) below, be entertained by the licensing board if, but only if, the objection or representation -

- (a) is in writing;
- (b) specifies the grounds of the objection or, as the case may be, the nature of the representation and states the basis upon which the person making it can demonstrate a real and material interest in making such objection or representation;
- (c) specifies the full name, address, postcode, telephone number and e-mail address (if available) of the person making it;
- (d) is signed by him/her or on their behalf;
- (e) was made to them within 21 days of the day that public notice of the application is made under paragraph xx above.

(2) Notwithstanding sub-paragraph 1(e) above, it shall be competent for a licensing board to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are properly satisfied that there is good and sufficient reason why it was not made in the time required under that sub-paragraph.

(3) An objection or representation shall be made for the purposes of sub-paragraph (1) above if it is sent to the licensing board in any of the following ways:-
delivered by hand within the time specified or
posted (by registered or recorded or special delivery post) so that in the normal course of post it might be expected to be delivered to them within that time or
faxed within that time and an acknowledgment of the fax is kept or
e-mailed within that time and an acknowledgment of the e-mail is kept

(4) The licensing board shall send, within 7 days of receipt, in any of the following ways:-
delivered by hand within the time specified or
posted (by registered or recorded or special delivery post) so that in the normal course of post it might be expected to be delivered to them within that time or
faxed within that time and an acknowledgment of the fax is kept or
e-mailed within that time and an acknowledgment of the email is kept
a copy of any relevant objection or representation (within the meaning of paragraph xx below) to the applicant to whose application it relates.

(d) Arrangements, if any, for children

.....
Note plans and further detailed information in regard to this application and the operating plan are available at Licensing Board offices [provide details of address] and on line at [] or through your local library

Any person who desires to object or make representations must not later than 21 days from the date of this notice lodge with the said clerk of the licensing board a written notice of their objection or representation in any of the following ways -

- (a) delivered by hand within the time specified or
- (b) posted (by registered or recorded or special delivery post) so that in the normal course of post it might be expected to be delivered to them within that time or
- (c) faxed within that time and an acknowledgment of the fax is kept or
- (d) emailed within that time and an acknowledgement of the email is kept

Any objection or representation relating to an application for the grant of a premises licence shall be entertained by the licensing board if, but only if, the objection or representation -

- (a) is in writing;
- (b) specifies the grounds of the objection or, as the case may be, the nature of the representation and states the basis upon which the person making it can demonstrate a real and material interest in making such objection or representation;
- (c) specifies the full name, address, postcode, telephone number and email address (if available) of the person making it;
- (d) is signed by him/her or on their behalf.

A PROFORMA FORM (PREFERRED) FOR MAKING OBJECTIONS OR REPRESENTATIONS IS AVAILABLE FROM THE CLERK AND ONLINE AT []

Date: Applicant/Agent

Signature
Address of Agents (if any):

.....
.....
.....

LICENSING (SCOTLAND) ACT 20XX (SECTION [XXX])
INTIMATION NOTICE OF APPLICATION FOR PREMISES LICENCE
(subject to the detailed operating plan)

(a) Applicant name & address [can use agent's address]

.....
.....
.....

(b) Name & address of premises (including postcode)

.....
.....
.....

Gross floor area

Occupant capacity

DAYS OF WEEK	PROPOSED HOURS OF OPERATION
Sunday	
Monday	
Tuesday	
Thursday	
Friday	
Saturday	

(c) Brief overview of the nature of the business proposed to be carried on in the premises

.....
.....
.....
.....

.....
Note plans and further detailed information in regard to this application and the existing operating plan are available at Licensing Board offices [provide details of address] and on line at [] or through your local library

Any person who desires to object or make representations must not later than 21 days from the date of this notice lodge with the said clerk of the licensing board a written notice of their objection or representation in any of the following ways -

- (a) delivered by hand within the time specified or
- (b) posted (by registered or recorded or special delivery post) so that in the normal course of post it might be expected to be delivered to them within that time or
- (c) faxed within that time and an acknowledgment of the fax is kept or
- (d) emailed within that time and an acknowledgement of the email is kept

Any objection or representation relating to an application for the variation of an operating plan shall be entertained by the licensing board if, but only if, the objection or representation -

- (a) is in writing;
- (b) specifies the grounds of the objection or, as the case may be, the nature of the representation and states the basis upon which the person making it can demonstrate a real and material interest in making such objection or representation;
- (c) specifies the full name, address, postcode, telephone number and email address (if available) of the person making it;
- (d) is signed by him/her or on their behalf.

A PROFORMA FORM (PREFERRED) FOR MAKING OBJECTIONS OR REPRESENTATIONS IS AVAILABLE FROM THE CLERK AND ONLINE AT []

Date: Signature Applicant/Agent

Address of Agents (if any):

.....
.....
.....

**LICENSING (SCOTLAND) ACT 20XX (SECTION [XXX])
 INTIMATION NOTICE OF APPLICATION TO VARY OPERATING PLAN**

(a) Applicant name & address [can use agent's address]

.....

(b) Name & address of premises (including postcode)

.....

Gross floor area

Occupant capacity

DAYS OF WEEK	EXISTING HOURS OF OPERATION	PROPOSED HOURS OF OPERATION
Sunday		
Monday		
Tuesday		
Thursday		
Friday		
Saturday		

(c) Brief overview of the proposed changes to the operating plan

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Publications consulted

ANNEX

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