

EAST AYRSHIRE COUNCIL

COUNCIL MEETING – 11th DECEMBER 2003

**NICHOLSON COMMITTEE REVIEW OF LIQUOR LICENSING – SCOTTISH
EXECUTIVE CONSULTATION**

Report by Head of Administrative & Legal Services

1. PURPOSE OF REPORT

- 1.1 To advise Council of the recommendations contained within the Nicholson Committee Report, with particular reference to those directly affecting local authorities, and to seek approval of a proposed response to the Scottish Executive's current consultation exercise in respect of the Nicholson Committee's proposals.

2. BACKGROUND

- 2.1 In June 2001 the Nicholson Committee was established by the Scottish Executive with the formal remit of reviewing "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".

Membership of the Committee was drawn from a range of agencies and parties with an interest and involvement in all aspects of the sale of alcohol, including the licensed trade itself, the Police, health agencies, youth bodies, Licensing Boards, the legal profession and the Courts.

- 2.2 The Nicholson Committee produced its report in August 2003, comprising ninety recommendations within a two hundred page volume. Virtually all of the recommendations enjoyed the unanimous backing of the Nicholson Committee and it is their very clear view that the recommendations have been presented to the Scottish Executive as 'a complete package'. The Nicholson Committee have expressed the hope that the Scottish Executive will recognise this when considering legislative proposals in light of their recommendations, and refrain from a cherry picking approach, as recently happened to an extent in England and Wales with the promulgation of the Licensing Act 2003.
- 2.3 On receipt of the Nicholson Committee report the Scottish Executive announced a consultation exercise, seeking views from all interested parties, to be submitted by no later than 19th December, 2003. Thereafter, it is expected that a draft bill will be prepared for presentation to the Scottish Parliament, possibly as early as April/May 2004 but more likely to be in the autumn, following the summer recess. From that point, the preparation and

implementation of the primary legislation, and associated secondary legislation and guidance, will probably take between another one to two years, with a likely transitional period to facilitate the switch from the current system.

- 2.4 Within East Ayrshire, separate arrangements have been made to enable Members of the Licensing Board to consider and comment upon the recommendations, including a meeting with trade representatives and a half-day seminar for Board Members on 10th November, 2003. Arising from this, the Clerk to the Board will shortly be finalising and submitting a formal response on behalf of the East Ayrshire Licensing Board.
- 2.5 This report invites consideration of a proposed response on behalf of the Council to the most significant recommendations from the Nicholson Committee as they affect local authorities, as distinct from Licensing Boards.

3. MAIN RECOMMENDATIONS

- 3.1 The main highlight of the report is Recommendation 20: "The present system of statutory permitted licensing hours should be abolished and should be 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". This also provides that "Licensing Boards should be entitled either to authorise the opening hours applied for or to authorise any other opening hours that appear to be appropriate having regard to their general declared policy and to the need to promote the licensing principles".
- 3.2 It will be noted that this is somewhat different from the "24 hour opening" widely reported in the media. The licensing principles referred to are those set out in Recommendation 1, which the Nicholson Committee believe should be contained within any future legislation as "the underlying basis for any decisions made by licensing boards".
- 3.3 Another significant shift is the proposal to remove the existing seven categories of license and replace these with (a) a premises licence and (b) a personal licence. A premises licence will be granted by the Board on the basis of a new operating plan which applicants will be required to submit when applying for a licence. Once granted, it will endure for the 'life of the business' without requirement for renewal, although it can subsequently be varied at the request of the applicant or, separately, reviewed, modified or revoked by the Board in appropriate circumstances, giving rise to a right of appeal to the Sheriff Principal.
- 3.4 Personal licences are to be sought from and granted by, the Licensing Board for the area in which an applicant lives, rather than where he is employed, although arrangements are proposed for consultation with the Chief Constable of the appropriate force where the place of residence and place of employment are covered by different Police forces.

Personal licences will require to be renewed every ten years.

- 3.5 These changes, and the various other recommendations made by the Nicholson Committee, will have a significant impact on the administration and conduct of Licensing Boards, as it is proposed to scrap the current quarterly meeting system and introduce an arrangement whereby Boards meet to transact business as and when required. Statutory timescales for the determination of applications have also been recommended. In addition, each Licensing Board will be required to establish a statutory licensing forum for its own area and will be under a duty to have regard to the advice received from that forum when formulating its own policy, and to give reasons where the Board decides not to follow such advice.
- 3.6 In addition to both the general underlying principles and the specific provisions contained within any new Act, the Nicholson Committee also recommend that further Regulations be produced, by way of secondary legislation, to provide for various procedural and administrative matters and to set out standard conditions which Boards can attach to licences. It is also recommended that the Scottish Executive produce national guidance for Licensing Boards, as well as a handbook for the licensed trade and a guide to the legal and procedural aspects of the proposed statutory process which the new Act will introduce.

4. PROVISIONS AFFECTING LOCAL AUTHORITIES

- 4.1 The Nicholson Committee have recommended that the liquor licensing function remain with local authorities, but if their proposals are indeed accepted and implemented on a collective basis by the legislature then there will be a radically different framework against which Boards will require to operate.
- 4.2 The Nicholson Committee has recommended a maximum fifteen members per Board (ten for a licensing division within a larger Board area) but has also recommended that only five members should sit at any one meeting. There will also be mandatory training for all Board members. The current provisions for disqualification of certain persons from membership of the Board and the criminal offence of trying to influence a member of the Board are likely to be retained.
- 4.3 The Nicholson Committee have recommended that the Scottish Executive produce standard application forms to ensure consistency at a national level and local authorities may have to make these available from local offices and introduce arrangements for these to be issued and received electronically.
- 4.4 The Committee has recommended that Local Authorities should no longer be recognised as a competent objector to applications (Recommendation 33), although this is consistent with their broader approach which seems intended to distinguish between potential 'objectors', such as neighbours, Community Councils, Churches, etc. (Recommendations 31 and 32) and the various agencies with an interest in the operation of licensed premises, who will still

be entitled to submit observations and/or representations in respect of any application (Recommendation 34).

Under the Nicholson Committee recommendations, local authorities now fall into the latter group, along with the Chief Constable and the Fire Authority. The current requirements for planning, building control and food hygiene certificates are recommended for retention, together with the introduction of a new fire safety certificate for premises.

- 4.5 The Nicholson Committee have recommended that local authorities should no longer be able to hold a license in their own name (Recommendation 21). Having identified that very few licences are held by local authorities, and notwithstanding that the grant of such licences has never before presented any difficulties in practice or given rise to any formal legal challenge, this recommendation is based on a perceived need to ensure that Licensing Board procedures are none the less strictly compliant with Article 6 of the ECHR (right to a fair hearing) by avoiding a situation in the future whereby Councillors in their capacity as members of the Board determine an application from their own Council. The Committee have instead recommended that Local Authorities be required to adopt some form of franchise arrangement, whereby any licensed premises within Council operated facilities would require the licence to be held and operated by a third party. Such arrangements are currently operated by Dundee City Council and they seem to have heavily influenced the Committee's consideration of this particular matter.
- 4.6 The final recommendation with specific implications for Local Authorities is the proposed requirement for all Licensing Boards to employ Liquor Licensing Standards Officers, with the function of supervising and monitoring the operation of the licensing system in their area and to work with licensees to "assist compliance with terms and conditions attached to a licence, and to report to the Licensing Board any persistent or serious cases for non-compliance" (Recommendation 39).

Clearly this could have financial implications if additional posts require to be created.

- 4.7 The Nicholson Committee have not really addressed the financial aspects of their recommendations in any great detail, in the belief that this can only be properly done once the Scottish Executive have decided upon specific legislative proposals. The Committee has, however, recommended that licensing fees be fixed centrally, by secondary legislation; be reviewed every two years and that they should be applied on a scaled basis according to the size and capacity of premises. The Committee have also recommended, in principle, that any future liquor licensing system should be self-financing. This has given rise to significant concern in all quarters as to the achievability of this goal and the level of fees which might be required in order to achieve a self-financing model, given the volume of applications for grant, and particularly renewal, would significantly decrease under the proposed new

regime. One solution might be for all license holders to be required to pay an annual retainer, to mitigate against massive 'one-off' application fees.

5. POLICY/LEGAL/FINANCIAL IMPLICATIONS

- 5.1 There are none arising directly from this report, given the fact that the Scottish Executive's consultation on the Nicholson Committee report represents the early stage of the development of any new statutory framework. However, if the Nicholson Committee's recommendations are implemented as a complete package, or at least in substantial part, then there will obviously be implications for all Local Authorities under all three headings. In policy terms, Boards will themselves have a greater role in formulating general policies, following appropriate consultation with the proposed new local licensing forums, which best meet and address identified local needs and concerns related to the sale of alcohol. In financial terms, there are various recommendations, as highlighted within this report, which, if implemented, will clearly give rise to additional expenditure on the part of Licensing Boards/Local Authorities, whilst it remains to be seen if the Scottish Executive can in fact deliver a self-financing system.

6.0 CONSIDERATION

- 6.1 This matter has previously been the subject of a report to a meeting of the Senior Staff Management Team on 3rd November and all affected Departments have taken the opportunity to comment on these proposals, particularly those which affect local authorities.
- 6.2 Comments received from Departments have been drawn together and form the basis of the proposed draft response annexed hereto as Appendix 1, for consideration by Council.

7. RECOMMENDATIONS

- 7.1 It is recommended that Council: -
- (i) consider the issues set out within this report,
 - (ii) remit to the Head of Administrative and Legal Services to advise the Scottish Executive of Council's views, in accordance with the proposed response set out in Appendix 1 with any amendments Council may consider appropriate and
 - (iii) otherwise to note the contents of this report.

David Mitchell
Head of Administrative and Legal Services
 5th December 2003

LIST OF BACKGROUND PAPERS

1. Nicholson Committee Report, August 2003

Any person wishing to inspect the background papers above should telephone 01563 576061 and ask to speak to David Mitchell, Head of Administrative and Legal Services.

Implementation Officer: David Mitchell

DM/MB

D R A F T**Appendix 1**

Mr D. Mitchell, Tel. (01563) 576061

Our Ref: DM/SM

Your Ref:

5th December, 2003

Scottish Executive
Justice Department
First Floor Rear West
St. Andrew's House
Regent Road
EDINBURGH
EH1 3DG

Dear Sir

REVIEW OF LIQUOR LICENSING LAW IN SCOTLAND

On behalf of East Ayrshire Council I welcome the opportunity to comment on the Nicholson Committee report and have set out in this letter the Council's formal response as part of the current consultation exercise, as approved by a meeting of the full Council on 11th December, 2003.

I should firstly confirm that a more detailed response will be submitted separately on behalf of the East Ayrshire Licensing Board and, accordingly, this response focuses on those proposals which are likely to have direct implications for local authorities, rather than Licensing Boards.

I would also confirm that in this Council's view the majority of the recommendations are to be welcomed and in many cases should, if implemented, serve to address in a common sense fashion what are perceived to be weaknesses within the current system. Accordingly, where no comment has been made in respect of any particular recommendation, this can be taken to indicate the Council's support for that proposal. The Council also shares the view of the Nicholson Committee itself that their proposals should be accepted as a 'complete package' and would urge the Scottish Executive, assuming there are to be legislative proposals forthcoming, to embrace such an approach and seek to retain and develop the whole body

of proposals so far as reasonably practicable and with a minimum of modification as may be considered necessary in light of the current consultation exercise.

Recommendation 1 - Introduction of certain guiding principles intended to underpin decisions taken by Licensing Boards

This is considered to be a sensible approach as a starting point to any new legislation and the suggested principles of:-

- (a) the prevention of crime and 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.

are considered to be appropriate and fit for purpose insofar as they fully reflect the interest and concerns of local authorities within the overall licensing framework.

Recommendations 2-9 inclusive - Administration/Operation of Licensing Boards

In general terms these are considered acceptable, although the Council considers the proposal that a maximum of five Board Members (Rec. 3(b)) should participate in any particular Board meeting to be unnecessarily prescriptive and unwarranted based on past experience. In any event, if the other proposals concerning the operation of Boards are taken forward in their entirety then it is clearly feasible that Board's will require to meet much more regularly, probably at least monthly, but to conduct much less business on each occasion. It therefore seems likely that this additional demand on Board Members' time and availability will lead informally to fewer Members attending on each occasion, as compared with the current situation where attendance levels at quarterly meetings are generally very high.

Accordingly, we would respectively suggest that it would be sufficient to legislate for a quorum of five (three for licensing division areas) rather than prescribe a maximum number, and we would suggest that Rec. 3(b) should be modified accordingly.

This Council also welcomes the proposal for mandatory training (Rec. 4) as this should promote greater consistency on a national basis, and agrees that the proposed minimum content (licensing law, best practice for the management and operation of licensed premises and judicial behaviour) should cover the essential elements.

As with certain other proposals, however, the Council would wish to be assured that appropriate provision will be made in respect of any associated cost implications and that such training costs will be included within the Scottish Executive's consideration of the proposal that any new licensing system should be self-financing (Rec. 45 – see below).

Recommendations 10 & 47 - Proposals for local statutory licensing forums and a national licensing forum

The recommendation that there should be a statutory licensing forum for each licensing board area (Rec. 10), and the associated proposals as regards their membership and function, is general welcome.

However, we consider that certain aspects require further fleshing out as regards the precise nature of the intended relationship between Boards and Licensing Forums. Is it intended, for instance, that Board Members will also be allowed to be members of such Forums, or are they to be entirely separate bodies which simply meet with Board Members at least annually, as proposed. If it is intended that such Forums are to operate at arm's length from Boards themselves, with no overlapping membership, then is it actually appropriate to impose the duty to create such Forums directly on to Boards, rather than local authorities themselves, which would possibly further strengthen the separation of the two. If this alternative course were to be followed it would still be appropriate to impose the ancillary duties on Boards to take account of Forums' views when formulating policy and to explain why they have not done so in any particular instance.

Separately, it is considered that great care should be taken to avoid any unnecessary duplication of effort or resources between the proposed Forums on the one hand and the existing Alcohol and Drugs Action Teams, etc. on the other. We note that some common membership is anticipated by the Nicholson Committee but would ask that the specific role of the proposed Forums should be designed to avoid any significant overlap of their functions and, consequently, any public perception that this may simply be a further unnecessary layer of bureaucracy or duplication of effort/resources.

The proposals for a national Licensing Forum (Rec. 47) are welcomed in their entirety provided this can be set up and operated in a manner which will enable it to respond timeously and effectively to issues which may arise from time to time and offer direct advice and assistance to Licensing Boards and Licensing Forums as regards the implementation of any new legislation, rather than simply serving to advise the Scottish Ministers on such matters.

Recommendation 13:-

- (a) In the interest of public safety all applications for a premises licence should be accompanied by a certificate of suitability from the relevant fire authority.**
- (b) Steps should be taken to make it a statutory requirement for fire authorities to consider an application for such a certificate in respect of premises which are to be used for the sale or supply of alcohol and where appropriate to grant it**
- (c) In appropriate cases a licensing board should be entitled to require the fire authority to specify a safe, maximum capacity for specified premises and, where that has been done, a board should be entitled to make it a condition of a premise's licence that the specified maximum capacity should not be exceeded.**

Proposals (a) and (b) are welcomed in principle, although there will clearly need to be separate provision made within the parallel ongoing review and legislative programme in respect of the Fire Services to ensure compatibility of any future legislative proposals in each area.

Further, with regard to proposal (c) it is our understanding that public safety issues in relation to fire escape design as specified below are verified at the design stage by Building Standards Surveyors under the terms of the Building (Scotland) Act 1959 and in particular with Part D and E of the Technical Standards. The areas covered are as follows:-

- structural fire protection of Building
- fire spread on internal linings
- fire spread to and from any adjoining buildings
- fire spread on external walls
- fire escape design and protection

- travel distances to an escape route
- sequence location and design of escape routes
- calculating and setting occupant capacities
- calculating widths of escape routes
- lighting and emergency lighting of escape routes
- fire exit ironmongery
- facilities for fire fighting

Within East Ayrshire, Building Control staff calculate and supply Occupant Capacity figures for premises as guidance to the Chief Constable and licensees to ensure that all relevant parties are familiar with the set levels.

The new premises are inspected during the construction process and a Completion Certificate issued when the works are compliant with the Building Standards and before the premises are able to open to the public, thereby ensuring that the premises are safe for use. Further, it is also our understanding that under the present statutory framework the Fire Authority cannot apply a more onerous Occupancy Capacity than that calculated under the Building Regulations. Clearly, it would seem more appropriate for any specified maximum capacity to be obtained from the Building Control service of the local authority rather than the Fire Authority, unless there is to be further necessary legislative change to the current regimes for both the Fire and Building Control authorities.

Recommendation 14 :

- (a) It should be a requirement that any application for the grant or provisional grant of a premises licence (including a licence in respect of off-sales) should, as appropriate, be accompanied by certificates from the relevant authority in respect of planning, building control and food hygiene.**
- (b) It should be competent for a licensing board to attach to a premise's licence additional terms and conditions relative to such matters where that is advised by the relevant authority or where that is necessary or desirable for the purposes of licensing law and for the promotion of the licensing principles.**

These proposals are fully supported, although it is disappointing to note that the Nicholson Committee report appears to take no cognisance of the role played by Environmental Health authorities in respect of health and safety in the workplace. Under the Health and Safety at Work, etc. Act 1974 and associated legislation Environmental Health officers play a significant role in ensuring the health, safety and welfare of both employees and patrons within licensed premises. The majority of incidents of injury and/or ill-health in licensed premises are due to failures in health and safety systems rather than food hygiene matters.

It is suggested that the “food hygiene certificate” currently used could be extended to incorporate compliance with Health and Safety legislation, and could perhaps be referred to as a “Public Health certificate”. Further, this Council considers that any changes to the legislation for this type of certificate should ensure that a national statutory fee is set for undertaking the process. This point has also been identified during the separate consultation by the Scottish Executive on the Review of Building Standards to the effect that Building Control authorities should have the ability to recover an appropriate fee for work undertaken by their staff in respect of licensing applications.

Recommendation 19 - A guide for premises and personal licensees in Scotland should be prepared, and a copy of it should be provided to every license holder.

The preparation of a guide for premises and license holders is also to be welcomed. It is hoped that the guide will be comprehensive enough to cover such subjects as food standards and hygiene, employee and public safety, noise control and acceptable limits (albeit in general terms) and environmental impact guidance (on a variety of subject e.g. class and waste recycling measures).

The guide could also include points of contact for more detailed guidance on specific topics such as hygiene and noise issues. Whilst it is not for officers of a local authority to act as consultants on specific matters (with, of course, the resulting conflict of interest) officers would at least be able to offer advice on sources of expertise.

The guide should include, if possible, a set of standards in relation to a wide range of issues, in order to clearly set out to applicants the responsibilities being placed upon them. Standards could relate to such things as occupancy rates, sanitary accommodation requirements (relative to capacity figures), hygiene requirements (including levels of documentation required), training requirements for staff, permitted levels of noise both within

the premises (for the protection of staff) and outwith the premises, in order to minimise disturbance to residents of the surrounding area.

Notwithstanding the above, it is accepted that the Guide and associated standards would require to include some degree of flexibility having regard to local conditions and intrinsic nature and character of the premises themselves. Where any variance from the set standards is required, it would be for the LLSO to liaise with the appropriate authority in order to provide the premises or license holder with the best available advice.

Recommendation 21 - It should not be lawful for a local authority to hold a premises license in its own name. All local authorities which presently hold liquor licenses in respect of premises owned or leased by them should in future make other arrangements. Such arrangements might involve the catering and in particular the license part of the operations in such premises being placed in the hands of third parties by virtue of franchise, lease or other similar arrangements so that in future any premises license can be applied for, and held by, the relevant franchisee or tenant rather than the local authority.

This Council is strongly opposed to this particular proposal on the basis that, notwithstanding the Human Rights consideration which has informed the recommendation, it is unwarranted in light of all previous operational experience; it is inconsistent with the existing provisions under the Civic Government (Scotland) Act 1982; it does not correct any particular wrong insofar as Local Authorities do not receive more favourable treatment from the Licensing Board and, in any event, it may not even achieve its intended purpose, if implemented, insofar as it could be argued on a strict analysis that a franchisee or lessor is not sufficiently arm's length from the Local Authority to ensure full compliance with Human Rights jurisprudence in terms of Article 6 of the ECHR.

In view of this it would be considered iniquitous to proceed with this proposal when it could have a severely adverse impact for both local authority staff and services.

Recommendations 33 & 34 – Local Authority no longer to be a competent objector to a licensing application, but will be a party who may submit observations or representations.

The general rationale behind these proposals, which effectively reinforce the distinction between recognised 'objectors' who may have an interest in a particular application, and the various statutory regulatory and enforcement agencies involved in licensing generally, is understood and accepted.

Recommendation 39 – Introduction of Liquor Licensing Standards Officers

It is understood that the proposed role of these officers would be to work with license holders to ensure compliance with the requirements of the legislative framework and the conditions of their license, initially through co-operation backed up with the sanction of referral to the Board in cases of persistent or serious non compliance. Provided their function were to be clearly defined, and in a manner which distinguished their role from that of other agencies, primarily the Police, Environmental Health and Building Control, and also set out how these various agencies are expected to work in a complementary fashion, then this Council would support this proposal.

Such support would, however, be dependant on a commitment that the necessary funding will be made available to pay for these additional posts, whether directly or through their inclusion in the legitimate costs to be met in accordance with the self financing principle set out in Recommendation 45 (see below). Attention should also be paid to the question of whether Boards themselves can competently employ staff (which is not the current position) and, if this is indeed to be the case, the Human Rights implications, if any, of employees of the Board being party to any proceedings before the Board as a ‘complainer’ as proposed in terms of Recommendation 40.

Recommendation 45 –

- (a) The fees payable in respect of liquor licenses should continue to be fixed centrally by means of a statutory instrument or other order.**
- (b) The fees determined as above should, so far as practicable, be of an amount which will make the licensing system self-financing.**
- (c) Consideration should be given to devising a system of fees in respect of premises licenses which will distinguish between premises of different size and capacity.**
- (d) The level of fee should be reviewed regularly, preferably annually but no less than every two years.**

The underlying principle of a self-financing system is broadly welcomed but it is expected that this could be difficult to attain in practice whilst at the same time achieving an

appropriate balance between the competing interests of the licensed trade and Licensing Boards in respect of this matter. On the one hand, fees should not be set at a level which might be prohibitive, particularly to small independent businesses, and which could then, in turn, adversely impact on the local economy in terms of tourism and hospitality provision. At the same time, additional resources will have to be made available to local authorities to meet the additional workload likely to face Boards, particularly in the transitional and early stages of implementation of any new system.

When account is also taken of the fact that there can only be a reduction in fee income if premises licenses are not to be renewable, it would seem that both an initial fee and an annual retainer will be required, to be set at appropriate levels, and with withdrawal of the license the ultimate sanction for non payment of any annual retainer which might be introduced.

This Council would also support the proposal that fees should be scaled in accordance with the size and capacity of premises, in order to promote the fairest possible system.

Recommendation 46 – Registered clubs to be brought within scope of new licensing framework.

It is welcomed that the perceived anomaly of a Registered Club being licensed by a Sheriff is to be removed, and that such clubs will now be included in the general licensing system. Whilst it is fair to say that these clubs do not generally give rise to any particular concerns regarding their method or standards of operation, there has long been a perception by some clubs that they are outwith the scope of the legislation which is applied to other licensed premises. This misperception will hopefully be removed by implementation of this proposal.

Recommendation 59 –

- (a) There should be a statutory presumption to the effect that persons under the age of 18 have a full right of entry to licensed premises of any kind.**
- (b) That presumption should, however, be subject to such restrictions as appear in a premises license with those restrictions having been proposed in the operating plan accompanying an application for a premises licenses, and having been authorised, with or without modification, by the relevant licensing board.**

- (c) Notwithstanding the foregoing, it should be open to any applicant for a premises license to opt out of the statutory presumption and to state in his operating plan or schedule that persons under the age of 18 will not have a right of access to his premises or to specific parts of them.**
- (d) The National Licensing Forum should, at an early stage in its existence, devise appropriate guidance in relation to the restrictions which are likely to be appropriate for premises of different types, and they might offer that guidance in the form of a list of standard conditions which are to apply in premises to which children have admission. As necessary, Ministers might also offer national guidance on such matters.**
- (e) The foregoing recommendations should replace all existing provisions relative to the presence of persons under the age of 18 in licensed premises.**

Whilst this Council acknowledges the underlying rationale for this proposal, namely the promotion of a more socially responsible and inclusive approach to the operation of licensed premises, we have serious reservations that this proposal is effectively too big a step to be taken at one time. Whilst accepting that there is certainly a need to review and improve upon current legislative provision as regards under 18's in licensed premises, it is considered that the basic principle behind any new system should still be one of enabling suitable premises to 'opt in' to the admission of under 18's (as is presently the case with Children's Certificates) rather than the reverse.

Accordingly, this Council is of the view that under 18's should not have an automatic right of entry to licensed premises of any kind. Instead, there should be a more limited right of entry to those premises which have been approved by a Licensing Board on the basis of the operating plan submitted by an applicant, subject to such conditions as may be prescribed amongst standard conditions, whether through legislation or the National Licensing Forum, or additional conditions arising from Boards' own policies, where appropriate.

Recommendation 60 –

- (a) Current prohibitions on the sale or supply of alcohol to persons under the age of 18 should be retained. Persons under that age should not be permitted to consume alcohol in any part of licenses premises; but a person of the age of**

16, but below the age of 18 should continue to be able to purchase beer, wine, made wine, cider or perry for consumption with a meal in any part of licensed premises which has not been excluded by the terms of the relevant premises license

- (b) 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 it should be readily available, free of charge, at various places such as post offices, universities and the like. Licensees 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 documents such as a passport.**

In general terms, these proposals are supported, but this Council would join the call for increased enforcement powers on the part of the Police and local authorities to enable more rigorous and effective identification and apprehension of defenders. Specifically, this Council believes that any legislative reform in this area should also make provision for test purchasing of alcohol by under 18's in strictly controlled circumstances overseen by the Police and/or other enforcement agencies, as has recently been provided for in England and Wales.

Recommendation 72 – The present provisions in Section 33 and 34 of the 1976 Act relative to occasional licenses and occasional permissions should be replicated in any new legislation. However, it should be provided that an occasional licenses may be granted to a personal license holder who has the appropriate qualifications entitling him to cater for the event in question; and in the case of occasional permissions there should be a statutory definition of ‘voluntary organisation’.

Where it is proposed to have an occasional license within a temporary structure the existing system allows for an assessment of the design and layout of the proposed structure by Building Control to ensure it complies with the relevant fire safety standards. This is a fundamental principle to ensure that public safety is maintained prior to the structure being used by the public and, for the avoidance of doubt, we would ask that similar provision be made in any new legislation.

I hope these comments are of some assistance and await with interest any forthcoming legislative proposals in respect of liquor licensing.

Yours faithfully

David Montgomery
Chief Executive