

3 CONSULTATION ON PROPOSED NEW MANDATORY CONDITIONS FOR PREMISES AND OCCASIONAL LICENCES - LICENSING (SCOTLAND) ACT 2005 (AN210-2012)

At its meeting on 14th June 2012, the Board agreed to carry out a consultation under Section 6 of the Licensing (Scotland) Act 2005 on whether to introduce new mandatory conditions for premises licences regarding the condition and standards of the licensed premises to which the licences relate. Suggestions were also made for training conditions to attach to future occasional licences. This followed an approach from the Dundee Licensing Forum which wrote to the Clerk to the Board earlier this year with a list of suggested conditions. This letter is attached at APPENDIX 8.

The Board asked consultees for their views on the list of draft conditions as a prelude possibly to including these as a supplement to the Board's Statement of Licensing Policy. Consultees were also asked if the Board, in the event it decided to adopt any of the conditions in respect of premises licences, should do so now or wait until it has the power to vary the conditions of existing premises licences. (At the moment, the Board can only attach any new conditions to new premises licences since the power to vary existing licences is dependent upon regulations being issued by the Scottish Government as to the areas in which Licensing Boards will be able to vary conditions of premises licences already granted.)

A total of 3 responses have been received, 1 from a premises licence holder and 2 from licensing solicitors. As far as the premises licence conditions are concerned, 1 response is supportive of the list of conditions being introduced, the other 2 (including the premises licence holder) saying that the Board would be exceeding its powers and straying into areas governed by other legislation (which would be outwith the Board's powers under Section 27 of the 2005 Act). Both of the responses from solicitors are of the view that the Board should wait until it has the power to vary existing licences before introducing any of the proposed conditions to avoid a "two-tier" licensing system whereby some premises are subject to the conditions and some not. Given the current uncertainty as to the legality of these conditions and the desirability of avoiding the position where only new premises licences can have the conditions attached, it is recommended that the Board defers any decision until the issue of the aforementioned regulations and that the Clerk be asked to contact the Scottish Government to try to ascertain when these regulations might be forthcoming.

As for the occasional licence conditions, the only significant comment was that applicants for occasional licences should be given sufficient notice of the proposed attachment of the training condition to enable them to make the necessary arrangements to train staff at the events concerned. This is entirely reasonable and, indeed, applicants would be given the opportunity to make representations to the Board before such conditions are attached. It is, therefore, recommended that these new training conditions be approved as a supplement to the Board's policy statement.