

Licensing (Scotland) Act 2005 – Consultation on Draft Guidance and Associated Draft Regulations

December 2006

Introduction

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing over 19,000 members. The FSB campaigns for an economic and social environment which allows small businesses to prosper.

FSB Scotland has taken a close interest in the development of new licensing legislation and welcomes this opportunity to comment on the draft guidance and draft regulations. Our comments relate to a number of specific sections in the guidance and these are outlined below, in the order they appear in the guidance and regulations, respectively.

Draft Guidance

1. Licensing Policy Statements

Duplication

Paragraph 30 should give further detail on the range of different regulatory regimes which now operate in licensed premises. The examples of health and safety and fire are only two of a long list including: Environmental Health (including food hygiene), Trading Standards (Weights and Measures), Smoking regulation, Security Industry regulation (from November 2007). The range of regulations affecting licensed premises offers clear opportunities for more streamlined inspection and enforcement and Licensing Boards should be encouraged, not only to avoid duplication, but to actively work with local authorities and other regulators to improve the regulatory environment for licensed premises, in line with the recommendations of the Hampton Report.

Discretionary Conditions

Statements should outline that these conditions will only be used where necessary and in a proportionate manner. Small businesses are seriously

concerned about the range of discretionary conditions which may be available to Boards. This is discussed in more detail in sections 11 and 12 below.

2. Overprovision Assessment

Capacity of Licensed Premises – Off-Sales

Guidance relating to off-sales in paragraph 36 needs to be clearer – there is potential for this to be confusing, particularly in relation to seasonal displays.

3. Premises Licence

Irresponsible Promotions

FSB Scotland is concerned that the conditions could be open to inconsistent interpretation and believes that the clarification in paragraph 100 is extremely important. It will be important for Boards to work with licensed premises to ensure they are aware of the new rules on promotions.

4. Personal Licence

Premises Manager

Consideration should be given to re-wording paragraph 131 regarding the need for the premises managers to be 'on site' to ensure the meaning is clear.

5. Excluded Premises

Community Resource

Communication must begin now regarding garage forecourt shops likely to be affected by section 123 of the Act. The sale of alcohol could be an essential part of existing businesses and the loss of this facility could be extremely damaging to the viability of the business. It is important that Boards begin to discuss this issue with businesses likely to be affected in advance of the transition period.

6. Sale and Supply of Alcohol to Children

Defences

Again, awareness amongst businesses is key to the success of such schemes - which must be used carefully, in a focused manner, if they are to be effective.

7. Licensing Standards Officers

Whilst businesses will appreciate that LSOs are not there to provide legal advice, they will nonetheless expect some form of guidance and advice on relevant matters. It may be worth considering the experiences of EHOs and TSOs in this respect.

8. Transition

Framework

There is a general concern that while no existing regular extensions are guaranteed under the new legislation, this should not restrict hours during the transition period.

Transfer of Existing Premises Licences

The flexibility provided to Boards in paragraph 286 could be unnecessary and costly for existing businesses. The flexibility for hearings for existing businesses should only be allowed in exceptional circumstances.

Draft Regulations

9. The Premises Licence Regulations

The principle of having a simple layout plan (which does not require costly professional drawings) is helpful. The form for layout plans however, (as set out in Schedule 4) needs further information – is a drawing supposed to be attached, or included in the relevant space?

10. The Licensing Conditions (Late Opening Premises) Regulations

We are concerned about the proportionate use of these conditions. In particular we feel that the definitions in section 3 should be tighter to ensure that only those types of business where there may be a need for these strict conditions are covered by the regulations. There may be a need for more detailed comment on these regulations to be provided in the draft guidance.

11. The Licensing (Mandatory Conditions) No.2 Regulations

The proposed amendment regarding baby changing facilities (section 17 (2)) needs to be clearer so that businesses understand what is required.

We are also concerned about the possible inclusion of more mandatory conditions and the cost implications these conditions would have for the affected businesses. No further mandatory conditions should be added until there is a full impact assessment of the number of businesses likely to be affected and the likely costs.

We are further concerned about the range of discretionary conditions being placed at the disposal of Boards. The guidance must set out clearly that these conditions should only be used on a case by case basis, since while some conditions may be necessary for certain circumstances, applied indiscriminately they could have a devastating impact on small businesses.

12. The Licensing (Discretionary Conditions) Regulations

Again, the condition specified in paragraph 2, setting out restrictions on where alcohol is displayed, risks being completely impractical for many small off-licences, not to mention other types of retail environment where alcohol is only stocked at particular times of the year e.g. Christmas displays. There are a range of scenarios in which this condition would be a nonsensical barrier to trade.

These regulations – and the circumstances in which they might be applied – should be completely re-thought.

13. Regulatory Impact Assessment

The RIA for these regulations is not attached to the consultation. Since the regulations contain a number of conditions not set out in the Act itself and which are potentially very costly to a range of businesses, we must see a full RIA carried out on the regulations before they are approved.

Indeed, it is difficult to comment on the appropriateness of some of the conditions without an understanding of the impact of the proposals. An RIA might also help establish the practicality (or not) of some of the conditions.

14. Support and Communication for Businesses

The new regime will result in significant upheaval for a large number of small businesses in Scotland and a great deal of thought on awareness-raising is required if we are to ensure a smooth transition. It would be useful to consider the early establishment of online advice for businesses, as has happened recently with other major changes to legislation e.g. smoking regulations. There should also be guidance for Boards on the availability of forms and guidance online. FSB Scotland would welcome any information from the Scottish Executive regarding available sources of advice that could be passed on to our members.