

# Regulatory Review Group (RRG): Review of the Licensing (Scotland) Act 2005

## January 2010

### Introduction

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing almost 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

The FSB welcomes the opportunity to submit a response to the *Regulatory Review Group (RRG)* on its inquiry into the *Licensing (Scotland) Act 2005*.

### Background

The FSB has taken a keen interest in this issue in recent years. Indeed we have submitted responses to Government consultations on various aspects of the licensing agenda, such as the draft training regulations in June 2007 and the proposed level of fees in September 2007.

In order to submit a comprehensive response to the RRG, the FSB emailed its membership to seek feedback on the issue. We received comments from across Scotland and from a wide range of business types; including B&Bs, small hotels, restaurants, cafes and visitor attractions. Our response highlights the many issues that were raised by our members.

### Fees / Cost

In response to the September 2007 Scottish Government consultation on Licensing Fees, the FSB accepted that although not a perfect measure of size of premises turnover, fee levels should, in general, be determined on the basis of rateable value. In that response we used an example of a small hotel that may have a relatively high rateable value, based on their provision of accommodation, but may sell alcohol to non-residents. This type of business, along with others such as B&Bs, pubs, restaurants and visitor attractions, have all seen disproportionate increases in their licensing fees since the introduction of the new regulations.

In that same consultation response, the FSB raised concerns about the level at which the application fees would be set. The fee for the smallest licensed premises was proposed to be £400, (for properties with a Rateable Value (RV) of up to £11,500), while the fee for the largest premises was only 2.5 times greater at £1,000. We pointed out at the time that a premise with a RV of £140,000 will have a turnover many times greater than the smallest premises. We therefore argued that there should be more fee band levels. Having narrower bands with more expensive fee levels at the top end of the RV scale would allow the fees at the bottom end to be reduced, while ensuring that Licensing Boards could recover their running costs.

We also pointed out that the annual fees fell disproportionately on smaller premises, where larger businesses paid just over four times more than the very smallest businesses, despite their RV being at least nine times higher. The FSB argued at the time for more bands for annual fees, with higher charges placed on larger premises which place greatest strain on the system and which are more likely to be able to absorb the impact of an increase in fee levels.

We were pleased that in the final *Licensing (Fees) (Scotland) Regulations 2007*, the Scottish Government moved some way towards rectifying this situation by reducing the smallest application fee to £200 and increasing the largest application fee to £2,000. However, the evidence gathered by the FSB from small businesses in recent months leads us to suspect that there is still a problem. The FSB does not feel that the Government went far enough following the 2007 consultation and we would like to see the very largest businesses pay proportionately more to reduce the financial burden on the smallest businesses.

The cost of the new system was raised by most members who responded to our survey. It was not understood why there was one licensing system for all and that it did not seem to take account of the differences in scale and location between various types of small businesses and larger businesses, such as a supermarkets and large chain hotels. Indeed one respondent said, “...*the profit barely covered the bills and licence fees.*”

The issue of cost was raised in terms of staff training; registration fees; lawyer’s fees for legal assistance; architect’s fees for detailed drawings of premises, and the cost of time to a small business owner to train new seasonal staff.

## **Staff Training**

In our response to the consultation on draft training regulations in June 2007, the FSB was broadly supportive of the principles outlined in the consultation document and welcomed the Scottish Government’s attempts to ensure that the regulations did not place too onerous a burden on businesses with regard to the training of staff. Indeed we also raised the point about casual workers or short term or seasonal staff, which we shall discuss in a little more detail later in our response.

However, it is clear from the responses we have received from our members, that the issue of staff training has become fairly onerous; particularly in small hotels, restaurants and visitor attractions, where seasonal staff on short term contracts are employed. Many respondents to our survey have said that the cost of training an individual to comply with the regulations can often outweigh the benefit of employing an additional member of staff, particularly when that member of staff will only be with the business for a short time.

Many members felt that because of the low margin involved in selling alcohol in their business, the cost of training was disproportionate to the income generated, and as such the margin was wiped out through the cost of training.

There was also an issue raised about the cost of training seasonal staff. Due to the nature of the economy in many parts of Scotland, seasonal staff are employed during particular periods in the year. While it is desirable for staff to be appropriately trained to comply with the law, many members highlighted the huge cost of time and money to train staff to comply with legislation for only a few short months in the year.

## **Personal / Premises Licence**

The personal and premises licence was the area which generated most feedback, with many members telling us that obtaining a full licence, and complying with the new legislation, made it economically unviable for a small business to offer alcohol to guests or customers. Our feedback suggests that many visitors from overseas cannot understand why they cannot order a beer or a glass of wine with their meal. Owners of small businesses have to explain that it is not economically viable for them to comply with the licensing regime.

One respondent who had obtained both licenses this year was considering allowing them to lapse next year and moving towards a “carry-out” licence in their on-site shop and charging guests corkage to drink in their restaurant.

Bed and Breakfast owners in rural Scotland in particular, felt that the initial cost and the annual cost of the licences was prohibitive and prevented them applying for a licence; and thus offering alcoholic beverages to their guests. This was seen as a particular problem in areas of Scotland with large numbers of overseas visitors, where they would like to taste Scottish produce, like whisky.

A recent report in a local newspaper in Angus, reported that eighteen premises in that local authority area were not going to renew their licences under the current system because of the costs involved. One licensee said, *“I sat and passed the exam for the Personal Licence but the other costs involved are too onerous.”*

Another respondent owned three premises and as such, he had to apply for a personal licence for each, which involved significant additional

cost. This is a consequence of the new legislation which requires at least one personal licence holder per premises.

Many licence holders were unhappy that they cannot now leave their premises on an urgent basis without first calling in another licence holder. There did appear to be some confusion about this, with some respondents reporting that they had been told it was acceptable for them to leave without a replacement licence holder being present.

## **Applications**

As the FSB highlighted in 2009, there was also an issue with the readiness of local authorities to meet the deadlines of the new system. Many of the FSB members who responded to our request for information felt that their local authority didn't understand the new system; were adopting an inflexible approach; and many were overly bureaucratic in requesting several copies of the same document, often at significant cost to the small business applicant.

One respondent who had experience of applying in more than one local authority area outlined his experience. He began by explaining that architect's drawings were required for the whole building, rather than merely the area in which alcohol would be sold, thus increasing the cost of employing an architect. He went on to explain that one local authority required him to submit six copies of architect's drawings and also present a case in front of a magistrate and a number of local authority officials, which was quite intimidating for a small businessman who had little or no experience of the process he was being asked to participate in.

He went on to contrast this experience with another local authority area where only two copies of the original fire drawings of the premises were necessary and there was no public hearing. The FSB would argue that there needs to be more consistency built into the present system across Scotland.

## **Rural Scotland**

A number of respondents raised the differences between a city centre location and the variety of businesses that exist in small towns and villages across Scotland. While the FSB accepts the need for a single licensing regime, we do feel that there needs to be some flexibility within that regime to take account of the cost of dealing with various types of problems in urban and rural Scotland. Many small businesses in rural Scotland view the new regulations as a policy tool to deal with a problem in urban Scotland which they do not feel responsible for.

## **Conclusion**

The FSB is pleased that the RRG has decided to review this piece of legislation as there is unease about the current regulations and we have detected a view among our membership that many of the issues have not been addressed fairly. The onus has fallen on the on-sales trade

and while the current policy debate is on unit pricing, no moves as yet have been made to prevent the large retail outlets being in a position to continue selling large quantities of alcohol at retail prices that are far below wholesale prices to the majority of the on-sales trade. The FSB sees this review as an opportunity to highlight some of the concerns of our members that the current regulatory framework represents a threat to the continuation of many small licensed premises.

Many small businesses in Scotland who apply for a licence to sell alcohol do it in order to allow a guest to enjoy an alcoholic drink in the lounge of their hotel or allow a customer to purchase an alcoholic drink with a meal in their cafe or restaurant. There are also many B&Bs, particularly in the north east of Scotland and Highlands and Islands, who wish to give guests the opportunity to sample local produce such as whisky. The findings from our survey of members would suggest that the current regulatory regime is preventing them from doing that.

Words like bureaucratic; inappropriate; complex; excessive; draconian and expensive came up regularly in the responses we received to our request for case studies; and there was a feeling that the “*responsible majority*” were being targeted to pay for the “*misdemeanours of the irresponsible minority*” through the new licensing regime.

There was also a fear expressed for the Scottish tourism industry and the impact that this legislation could have, particularly on rural economies. As we outlined earlier in our response, many small businesses have not renewed their licence and as such are now not promoting products such as whisky, real ales or speciality liqueurs.

The initial letter from Professor Griggs requesting evidence asked for comments on compliance, costs and unintended consequences. We hope that our comments in this response have highlighted some of the problems which have been faced by small businesses in their desire to comply with the new regulatory regime. We also hope that we have outlined clearly that many small businesses have faced serious problems in their desire to comply. We believe that our call for narrower bands and higher fees for the largest businesses at the top end of the scale, along with a greater consistency across Scotland in the implementation of the legislation, would aid compliance of the legislation among Scotland’s small business community.

As a member of the RRG, we will be happy to have further discussions about our response and our wider views on the subject.

For further information on any of the points raised in this submission, please contact Martyn McIntyre, Policy Officer, on [martyn.mcintyre@fsb.org.uk](mailto:martyn.mcintyre@fsb.org.uk) or 0141 221 0775.