

Social Responsibility Levy - Initial Consultation

February 2011

Introduction

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

In terms of our membership, FSB research shows that:

- 24 per cent of our members operate in the retail sector (a proportion of which are licence-holders); and
- 13 per cent of our members operate in the hospitality and catering industry (most of which will be licence-holders)¹.

From this we estimate that a significant proportion of our membership could be affected by imposition of Social Responsibility Levies, if they were imposed across Scotland. Scottish Government figures from 2007² showed there were 17,021 liquor licences in existence. Although this number is reported to have declined in the intervening years, there still remains a significant number of businesses that are likely to be affected by any implementation of a levy.

The FSB supports the general principle that Scotland's attitude and behaviour to alcohol needs to be addressed, as was the premise of the Alcohol etc. (Scotland) Bill 2010. However, we have grave concerns that:

- the Social Responsibility Levy (the levy) will contribute very little towards this, as the link between licence-holder behaviour and Scotland's alcohol problems is at best complex, at worst tenuous;
- as proposed, the levy is incapable of complying with the principles of better regulation: transparent; accountable; proportionate; consistent; targeted only at cases where action is needed;

¹ FSB-ICM Voice of Small Business Annual Survey 2009:

http://www.fsb.org.uk/policy/rpu/scotland/assets/publi_survey_fsbicmscotland_2009.pdf

² <http://www.scotland.gov.uk/Publications/2008/08/11160147/0>

- the levy potentially has a disproportionately negative effect on small licensed businesses.

The FSB raised these issues with the Health and Sport Committee members prior to Stage 3 consideration, alongside other business and sector representative organisations but our concerns were not addressed. They might have been addressed in a Business Regulatory Impact Assessment prior to the levy being enshrined in legislation but no BRIA relating to the levy's impact has in fact ever been carried out. We therefore appreciate the opportunity to respond to this consultation and sincerely hope that the Scottish Government's commitment to better regulation is sufficient to ensure that our response be given serious consideration.

Purpose of the social responsibility levy

The underlying purpose of the Social Responsibility Levy lacks clarity. The purpose cited is ***“to meet or contribute to expenditure incurred or to be incurred by any local authority in furtherance of the licensing objectives, and which the authority considers necessary or desirable with a view to remedying or mitigating any adverse impact on those objectives attributable (directly or indirectly) to the operation of the businesses of relevant licence-holders in the authority's area.”***

The FSB believes that this purpose is far too broadly worded and is open to widely variable interpretation from authority to authority. This is almost certain to result in an even more variable impact on businesses and will definitely cause the Social Responsibility Levy to fall short in terms of transparency, accountability, or consistency. Any expenditure local authorities might care to make could be argued to meet the purpose as set out above. Neither legislation yet passed, or the draft regulations as proposed, provide a viable framework for what does and does not constitute 'furthering the licensing objectives' or 'necessary and desirable' expenditure.

Further, with reference to businesses who 'directly or indirectly' cause an adverse impact for which a levy might be necessary, the problem of how these parties can be identified has already emerged in previous debate at Parliamentary Committee level. Far from being resolved, this issue has yet even to be addressed. It is difficult to see how local authorities can succeed in defining this objectively, when parliamentarians and policy-makers at a national level have failed.

We recognise that regional differences will dictate that the 'relevant' licence-holders in one area may differ from those in other areas (there are very few nightclubs in the Western Isles compared with those in central Glasgow, for example) and that social and civic problems associated with alcohol will manifest themselves in different ways from area to area.

However, the FSB is concerned that, given the pressure to cut budgets and consolidate resources, local authorities and licensing boards, when faced with such a broad definition, will pragmatically choose to apply the levy to all licence-holders for the sake of simplicity. Indeed, the draft regulations enable this approach with no real restrictions. In the event of this issue being left unaddressed, the Social Responsibility Levy would also fall short of the proportionality principle of good regulation and would certainly not be targeted at the areas where action is required.

Fundamental questions remain about the Levy, which no debate or documentation has yet addressed:

Is the desired outcome of the levy primarily to raise money because the sale of alcohol is incurring costs to councils? Or, is it to raise standards in licence-holders' behaviour in relation to alcohol sales?

If the answer is the former, the draft regulations as they stand need radical amendment because the desired outcome would be either to ensure a steady income stream to councils to cover their costs or to reduce the sale of alcohol. However, introducing a 'good practice' incentive element, if levies are managed transparently and accountably, will reduce the reliability of the income stream. Further, it is unlikely that the imposition of levies will change the rate of alcohol sales. Rather it is likely only to contract the range of suppliers, as smaller businesses fold due to prohibitive running costs and larger retailers absorb additional costs within their wider profit margins. The FSB strongly opposes any levy regime operating along these lines.

If it is the latter, then effectively what is being proposed is an additional regulatory regime, and the regulations as they currently stand fall woefully short of providing a robust and transparent framework to operate this effectively.

What follows in this response assumes that the levy's purpose is to regulate licence-holders' behaviour and ensure that only those who do not comply with socially responsible sales good practice, and who are known to licensing boards as problem operators are targeted.

It is perhaps pertinent to note here that:

- 67 per cent of FSB members in Scotland say that reducing the regulatory burden on businesses should be a top Scottish Government priority in the coming term.
- 62 per cent have seen the cost of regulation increase for their business in the last four years³.
- 30 per cent say the burden of regulation is one of the principle barriers to success in their business⁴.

This is one of the reasons that the FSB was opposed to the levy at the outset. However, given that the provision for a levy has been passed by Parliament, responsible licence-holders will be just as interested as others in ensuring that any regulation put in place discourages bad practice, and protects their good reputation. Our members would therefore support this approach. There remains an additional question about whether this would be practical given the cost to any authority of administering such a system. However, it should not follow that if the cost of good regulation outweighs the benefit, it should be replaced by bad regulation.

³ FSB Member Survey Panel: November 2010

⁴ FSB-ICM Voice of Small Business Annual Survey 2009:

http://www.fsb.org.uk/policy/rpu/scotland/assets/publi_survey_fsbicmscotland_2009.pdf

Draft regulations

There are several other aspects of the draft regulations as proposed about which the FSB has concerns, but where no response has been invited in the consultation. We highlight these sections along with our concerns below.

Power to impose a social responsibility levy

3. – (2) Subject to paragraph (3), it is for the local authority to determine the descriptions of relevant licence-holders on whom a social responsibility levy is to be imposed.

We have outlined many of our concerns about this clause above, as it mirrors the wording of the purpose. As we have said, the definition of ‘relevant’ should be made by guidance in the regulations, based on examples of good and bad licence-holder practice. Subject to paragraph (3) the FSB would be opposed to any definition of ‘relevant’ on the basis of business type (e.g. all on-trade or all off-trade). This would suppose that all operators with a similar business type have the same practices, which, it must be recognised, is not the case. ‘Relevant’ should have a direct relation to the problems the authority imposing the levy is seeking to mitigate.

3. – (3) A local authority may only impose a social responsibility levy on the holder of a premises licence or occasional licence if the sale of alcohol is not an insignificant part of the business of that licence-holder.

The FSB welcomes this clause, particularly on behalf of members who own small guest houses and who offer their guests the occasional drink as part of their service. However, the regulations do not state what the definition of ‘insignificant’ is. Our assumption is that this definition is once more being left up to the local authority or licensing board. Again we are concerned that inconsistencies from area to area will quickly appear as levies are implemented, similar to those which emerged in the implementation of previous regulatory and licensing regimes.

3. – (4) Paragraph (3) does not prevent a local authority from imposing a social responsibility levy on the holder of a relevant licence under the 1982 Act who is also a holder of a premises or occasional licence.

The wording of this clause could do with clearer definition. We assume this means that if a licence-holder holds more than one licence, for example, a premises licence and a public entertainment licence, both of which are subject to a levy, he/she must pay both levies and cannot be exempted from paying one on the basis that he/she is paying the other?

The viability of this clause is subject to the amount at which levies are likely to be set and this is as yet uncertain. Some modelling work needs to be undertaken to determine the potential impact of this clause on businesses.

Amount of a social responsibility levy

4. (1) ... the amount of a social responsibility levy to be imposed on a relevant licence-holder is to be determined by the relevant local authority.

(2) The local authority must –

- a) **identify the expenditure that would meet the purpose set out in section 10(3) of the 2010 Act, and**
- b) **estimate the amount which will be raised by the social responsibility levies it proposes to impose in a financial year.**

The FSB has concerns about how auditable this arrangement will be. There is no detail in the regulation about how a local authority's proposed expenditure of the amount raised will be scrutinised or how far in advance it must publish this prior to imposing the levy. In addition, the ability to estimate each year the expected income of the levy would be severely hampered if anything other than a blanket approach were taken which, as we have already stated, is not consistent with good regulation. This arrangement might be avoided to an extent if the definition of permitted expenditure were clearer in the regulations.

Provision of information

6. – (1) A relevant local authority may require a relevant licence-holder to provide that authority with statistical or other information for the purpose of that authority's functions in relation to social responsibility levies.

The FSB is opposed to a blanket imposition of further collection of new data sets on businesses without a clear benefit. If the information is collected in order to determine whether licence-holders can demonstrate sufficiently good practice to qualify for exemption, this might be slightly more acceptable, although it still assumes that the licence-holder is irresponsible until proven otherwise. If additional information is required to operate a levy, the regulations should determine what information is required and the regularity with which it should be collected so that consistency in what is required can be maintained across local authority areas. This would not affect local authorities' ability to make local decisions based on the information they receive through this route.

9. Use of monies raised

(1) A local authority may only use the money raised by social responsibility levies for the purpose set out in section 10(3) of the 2010 Act.

(2) A local authority must publish details of the expenditure which the monies raised by the social responsibility levies are used for.

(3) Such details must be published in such a manner and at such a time as the local authority considers appropriate.

It is almost meaningless to insert this section into the regulations in its current form. If publication is not required to a defined manner and schedule, there can be no scrutiny of whether the local authority is achieving the objectives the regulations are there for. As worded, clause 3 of paragraph 9 seriously jeopardises the regulations' capacity for transparency and accountability.

Consultation questions

- 1 How should any levy for licence-holders of a premises licence be determined?**
 - **Based on rateable value as per the current licensing fee arrangements?**

- **Based on alcohol turnover? By volume or price?**
- **Different rates for on and off-trade?**
- **For the off-trade, based on percentage of alcohol display area?**
- **Are there other methods that more accurately reflect the volume of alcohol sold by a business?**

Rateable value

The use of rateable value as a proxy for calculating regulatory fees is already fraught with problems and the FSB therefore opposes its use in this case. The methodology by which rateable value is calculated lacks transparency, has a large number of anomalies and is therefore a very blunt instrument when applied to additional regulations. The FSB has already called for a review of how rates are calculated and the use of rateable value in regulation⁵. We are concerned that further use of rateable value is likely to affect large numbers of smaller businesses disproportionately. Particularly of concern is the small independent hotel sector, where following the revaluation in 2010, rateable values have increased in some cases as much as 200 per cent. This has also affected the cost of hotels' premises licences. This sector not only has to cope with pressures from rates increases and subsequent licence increases but also from increase in VAT, alcohol duty, cost of waste management and collection, the ever looming threat of bed tax etc. Further increases in costs to these businesses based on rateable value could therefore be crippling, as many of our members have already highlighted⁶.

The only advantage to using rateable value as a means of calculating levy amounts is that local authorities would not need to collect and process any new types of information. Again in this case we would highlight that easy regulation does not necessarily equate to good regulation.

Alcohol turnover

Alcohol turnover by volume based on annual alcohol duty receipts to Her Majesty's Revenue and Customs would appear to be a more preferable option for determining a levy. This would be a more transparent and potentially fairer approach. However, further modelling of how the information could be extracted and its impact on the wide range of different businesses holding licences potentially subject to the Social Responsibility Levy is necessary.

On/off-trade

The FSB believes that the diversity of the licence-holding community goes far beyond on/off-trade. There is a wealth of difference between the small local village pub and the city nightclub with three floors. There is also a significant difference between the specialist store and the local off-licence. Determining differences simply between these two types of licence-holders is not particularly helpful. More work, in conjunction with licensed-trade stakeholders, to explore appropriate determining mechanisms for different types of business would be useful.

The FSB does not believe the use of display area percentages is a viable measure for determining the levy. This can be a very subjective measure, with data based on estimates or

⁵ e.g. in respect of surface water drainage charges

⁶ The FSB can provide evidence from members on this issue on request.

outdated information rather than accurate measurements. It can also be negated by size of warehouse or storage area, subsequent changes to shop fittings and other factors.

2 How should any levy imposed on holders of the following licence be determined?

- **Street traders' licences, where the licence authorises the carrying on of a food business**
- **Public entertainment licences**
- **Late night catering licences**

Consistent with the points made above, if a levy is to obey the principles of good regulation, it should be grounded firstly in good practice and risk-based considerations and types of businesses likely to be affected rather than licence type alone.

3 At what level should any levy be set?

We refer back to our recommendation for better definition of what kind of expenditure is permitted for levy income. Given that the levy fee will not simply be to recover administration costs as with the licence fee, it is essential that levy rates bear a clear relation to planned expenditure. This is the only way to ensure fairness. In addition to this, the FSB believes that it is essential that the Scottish Government imposes a maximum level at which levies can be set. Levels of different licence fees already vary considerably from authority to authority (e.g. public entertainment licences) and inconsistency with a lack of accountability for local differences will only increase if some limitations are not imposed on this income stream.

The FSB is concerned that the cost of fairly administering this regulation may outweigh the benefits, particularly in relation to small businesses. We believe it is necessary to conduct a modelling exercise based on local authority administration costs and the impact on different types of business licence-holders to test the viability of the levy more rigorously before any levies are approved.

4 Should the local authority be required to indicate the amount of the social responsibility levies likely to be imposed in the levy year prior to the levy year (regulation 5 refers)?

The FSB recommends that notice is always given in good time and in a manner which ensures all licence-holders are aware (e.g. letter) to allow them to prepare for what they will need to pay or what action they will need to take in order to ensure that they can be classed as responsible operators. This brings us to yet another concern: the lead-in times and resources required to:

- estimate numbers of licence holders to be liable;
- estimate the expenditure required to mitigate negative impact;
- work out from these the rate of the levy up to an agreed maximum; and
- notify businesses in time for them to prepare,

may make an annually set levy unviable, even if the levy were to be applied to all licence-holders. Moving towards a levy over a longer period of time also negates any pretence that those liable for the levy have any power or responsibility to affect the problems for which it is being imposed.

5 How will 'good practice' be determined?

The FSB considers that this section is best addressed by licensed trade stakeholders both from the industry and local authorities. The introduction of a 'good practice' element in the implementation of the levy appears to support the principles of better regulation. Indeed, the FSB supports regulation where good practice is taken into account.

6 Who will determine 'good practice'?

The FSB believes that good practice should be defined centrally following advice from licensed trade experts and licensing boards. Different standards of good practice in different authority areas should not be permitted under the regulations. Given clear guidance on what constitutes good practice, licensing boards would be ideally qualified to make decisions on whether individual licence-holders in their areas demonstrated this. The FSB would emphasise that definitions must be developed and agreed by stakeholders before the regulation goes live, so that no doubt or confusion can arise. It is essential that the mistakes made during the implementation of the Licensing Scotland Act 2005 and the Knife Dealers' (licence conditions) Order 2009 are not repeated.

7 What level of reduction in any levy should the demonstration of 'good practice' result in?

We believe that if good practice is taken into account at all, exemption should be an option for any licence-holder. This is based on the principle that it is theoretically possible for a licence-holder to demonstrate that they are socially responsible operators and that the ideal outcome might be for all licence-holders to be exempt from paying any levy on the grounds that they are all exemplars of good practice. However, if this principle is taken into account, then the approach implied by the consultation – which assumes that the levy, once approved, will continue year on year – is fundamentally wrong. It is not the purpose of regulation to generate a surplus. Further, if administrative structures become too burdensome to ensure that the principles of good regulation are upheld, then the regulation itself is unviable.

8 Appeals process

The FSB believes that if a levy is implemented it is essential that there is an accompanying appeals process. This should be the case whether the levy is applied to all licence-holders or certain groups. For this reason it is essential that local government's duty to publish their expenditure intentions and use of monies to sufficient detail to ensure that:

- the reasoning behind imposition of a levy;
- the amount to be levied; and
- the liability of the group identified as being liable,

is clearly understood. The current regulations do not enable this.

We also believe that a requirement to review levies once in place and provisions allow a levy to be lifted and conditions under which this is necessary should be incorporated into the regulations.

Summary

The FSB has for some time been calling for a more informed and considered approach to regulation from the Scottish Parliament and the Scottish Government. The draft regulations for the Social Responsibility Levy include all the pit-falls of bad regulation. This is quite apart from our doubt that the Social Responsibility Levy will achieve much in the way of changing Scotland's relationship with alcohol.

If the levy is to proceed at all, it must involve a regulatory model based on the principles of good regulation, which has the potential to deliver a tangible and realistic outcome, namely: better standards of social responsibility in the sale of alcohol.

As it currently reads, the purpose of the levy is simply to facilitate expenditure, and therefore the real impact of this policy will be very difficult to measure. Anyone can spend money, but it takes considerably more thought and policy development to implement something which can deliver a measurable outcome.

To develop a regulatory model which can deliver a measurable and successful outcome, the current draft regulations require:

- significant amendment and refocusing with far tighter definitions and guidance to ensure that authorities can identify more clearly what problems they are targeting through regulation and what they can and cannot spend the funds raised on; and
- Modelling work and a robust business regulatory impact assessment to test how different fee structures and frameworks will affect businesses and whether the regulations can practicably be implemented by authorities to deliver benefits that outweigh the administrative burdens.

The FSB appeals to the Scottish Government to use this opportunity to break the cycle of ineffective and burdensome regulation and begin to build a regulatory landscape which can deliver real benefits to Scotland.

For further information on any of the points raised in this submission, please contact Mary Goodman, Senior Policy Advisor, email: mary.goodman@fsb.org.uk t: 0141 221 0775.