

REPORT TO: LICENSING BOARD - 18TH FEBRUARY 2010

REPORT ON: LICENSING (SCOTLAND) ACT 2005 - AMENDMENT TO STATEMENT OF LICENSING POLICY - IRRESPONSIBLE PROMOTIONS AND CHILDREN ON LICENSED PREMISES

REPORT BY: CLERK TO THE LICENSING BOARD

REPORT NO: 108-2010

1.0 PURPOSE OF REPORT

- 1.1 To advise the Board of the consultation process following upon the publication of the proposed supplements to the Board's Statement of Licensing Policy and to recommend the adoption of appropriate supplements to the policy.

2.0 RECOMMENDATIONS

- 2.1 That the proposed supplements to the Board's Statement of Licensing Policy contained at APPENDICES 1 and 2 to this Report be adopted for publication in terms of Section 6(3) of the 2005 Act, with the exception of Paragraph A9 of APPENDIX 1 which should be deleted.

3.0 FINANCIAL IMPLICATIONS

- 3.1 In terms of the 2005 Act and regulations made thereunder, the fees payable to the Board in respect of applications under the Act are to be broadly equivalent to the expenses incurred by it in administering the Act. There should therefore be no financial implications for the Board arising from this report.

4.0 BACKGROUND

- 4.1 The Licensing (Scotland) Act 2005 came fully into force on 1st September 2009. At the meeting of the Board on 24th September 2009, it instructed officers to prepare a report summarising the implementation of the 2005 Act so far, any issues which had been identified, enforcement action taken and any proposals for steps the Board could take to ensure the smooth operation of the provisions of the Act. Reference is made to Item I of the Minute of the Board meeting of 24th September 2009 and Report 565-2009 to the meeting of the Board on 19th November 2009 in this regard. At the meeting on 19th November 2009, the Board agreed to issue the consultation documents at APPENDICES 1 and 2 to this report as proposed supplements to its Statement of Licensing Policy in relation to "irresponsible promotions", price variations and the presence of children on licensed premises in certain circumstances.

5.0 MAIN TEXT

- 5.1 Schedule 3 to the 2005 Act contains a prohibition against irresponsible promotions and also the variation of the price of alcohol in certain circumstances. Due to the lack of clarity in many of the Act's provisions in this regard and to enable licence-holders to be aware of how the Board is likely to view particular types of promotion, it was decided that a supplement be produced to the Board's Statement of Licensing Policy to this effect. Before such a supplement can be adopted, the Board was required to consult with :

- the Licensing Forum;
- any persons whom the Board thinks appear to be representative of any interests not already represented on the Licensing Forum which are listed in Paragraph 2(6) of Schedule 2 to the 2005 Act;
- any other persons the Board thinks appropriate.

A number of responses were received and these are attached as APPENDICES 3 - 9.

- 5.2 Many of the provisions relating to irresponsible promotions do not apply to off-sales. The Scottish Government has included specific rules for promotions on off-sales premises in the

Alcohol, etc. (Scotland) Bill which was published during the consultation period. These rules, if enacted, will result in the amendment of the 2005 Act to remove off-sales from the ambit of Paragraph 8 (2) (e) of Schedule 3 and, therefore, Paragraph A9 of APPENDIX 1 should be disregarded.

5.3 The principal response received is that contained at APPENDIX 4 from the Scottish Beer and Pub Association (SBPA) and this has been adopted by virtually all of the other respondents. This takes issue with the contents of the examples in APPENDIX 1 with the exception of Paragraphs A1, A6, B2, B3 and B5. Insofar as the remaining paragraphs are concerned, there is a difference of opinion between those acting for the respondents and the Board's own legal staff as to the intentions of the 2005 Act. The contents of APPENDIX 1 set out the reasoning behind the proposals and it is recommended that these are adopted for the reasons stated. It is recognised that these matters will only be definitively resolved by the courts.

5.3 One further matter which was issued for consultation as a supplement to the Statement of Licensing Policy concerns the presence of children and young persons in licensed premises before and after football matches. This is not currently addressed in the Board's policy statement and a number of requests have been received from licensed premises in the vicinity of the two major football grounds for variations to allow children and young persons onto the premises in such circumstances. In order to try to accommodate these requests and also to take account of the licensing objective of the protection of children from harm, the suggested amendment to the Board's policy is set out at APPENDIX 2 to this report. There have been no adverse comments on this aspect of the proposed policy changes and it is recommended that APPENDIX 2 be adopted for publication.

6.0 POLICY IMPLICATIONS

6.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

7.0 CONSULTATIONS

7.1 The Chief Executive, the Director of Finance and the Head of Environmental Health and Trading Standards have been consulted in the preparation of this Report.

Date Patricia McIlquham
Clerk to the Licensing Board

APPENDIX 1

IRRESPONSIBLE PROMOTIONS AND PRICE VARIATIONS - DRAFT CONSULTATION DOCUMENT

"Drinks promotion" means in relation to any premises, any activity which promotes, or seeks to promote, the buying or consumption of any alcohol on the premises. Schedule 3 paragraph 8(5)

Promotions can occur in relation to both on and off sales.

A drinks promotion which involves a variation in pricing will be effected by the requirements of Schedule 3 paragraph 7 "Pricing of alcohol"

Schedule 3 paragraph 8 (2) subject to the requirements of paragraph 8(3) states that a drinks promotion is irresponsible if it falls within the descriptions listed in Schedule 3 paragraph 8(2).

Paragraphs 7,8(1),8(2) & 8(3) are reproduced in full at the end of this note.

An irresponsible drinks promotion must not be carried on in or in connection with any premises. Schedule 3 paragraph 8(1)

Presently there is no definitive guidance as to what constitutes an "irresponsible drinks promotion". Examples of drinks promotions can however be considered individually against the legislative criteria to assess if the promotion is irresponsible in terms of the Act.

The following list is of promotions which have or are occurring locally and appear to be potentially in breach of the legislation. The list is not definitive so not being on the list does not mean that a promotion is in compliance with the Act.

In the absence of any case law this list serves only as a means to focus discussion on what actually constitutes an irresponsible drinks promotion and states in each instance why the specific promotion is considered irresponsible.

Following the list of irresponsible drinks promotions is a list of promotions that are potentially in breach of the pricing of alcohol requirements of Schedule 3 paragraph 7.

A. Irresponsible drinks promotions

1. **All inclusive offers.** For example, a party night promotion, where the purchase of a ticket or payment of an admission charge entitles the purchaser to access to a free bar. This promotion involves the supply of unlimited alcohol for a fixed charge and therefore Schedule 3 paragraph 8 (2) (d) applies.
2. **Watch the match and if your team wins get a free pint of beer.** For example, a promotion that requires a customer to be in the premises at the beginning of a televised sports event and at the end of the contest dependent on the result the person may be given a free pint of beer. This promotion is offering alcohol to be consumed on the premises as a reward for being in the premises and therefore Schedule 3 paragraph 8(2) (h) applies.
3. **Double up.** For example, a premises offers customers the chance to double up by offering a double measure for an extra 50p(in addition to the price for a single measure).This promotion offers an extra measure of a alcohol at a reduced price on the purchase of a measure of alcohol and therefore Schedule 3, paragraph 8(2) (c) applies.
4. **Student nights.** For example, a night club advertises/distributes flyers giving details of the venue, entry fee and stating that the first drink is free. The free drink is offered as a reward for entering the premises therefore Schedule 3 paragraph 8(2) (h) applies.
5. **Drinks vouchers.** For example, a night club advertises/distributes flyers giving details of the venue, entry fee and stating that five £1 drink vouchers will be given to the customer on entry. The vouchers can be handed over the bar in exchange for a drink .This constitute giving alcohol as a reward for entering the premises therefore Schedule 3 paragraph 8(2) (h) applies.

6. **Drinks as prizes / rewards.** For example, a quiz night or competition where alcohol is offered for consumption on the premises as a prize for winning or a reward for taking part. Schedule 3 paragraph 8(2) (h) applies.
7. **Reward card.** For example, on application by a customer a points card is issued by a premises. Every time a purchase is made by the card holder in the premises the card is credited with points. The points are given a cash value and can be claimed against the price of alcoholic drinks. This constitutes giving alcohol as a reward for frequenting the premises therefore Schedule 3 paragraph 8(2) (h) applies.
8. **Free bottle of wine.** For example, a restaurant offers a set meal for two with a free bottle of wine for £50 (excluding Saturdays). This constitutes giving alcohol as a reward for frequenting the premises therefore Schedule 3 paragraph 8(2) (h) applies.
9. **Bulk buys.** For example, a supermarket offers a reduction in the relative cost of purchasing a particular beer if the customer buys a multi pack. This constitutes encouraging or seeking to encourage, a person to buy a larger measure than the person had otherwise intended and therefore Schedule 3 paragraph 8(2) (e) applies.

Note - measure is not defined in the Act

B. Pricing of Alcohol

1. **Offering the same drinks at different prices in the same premises.** For example, prices in the lounge bar of a pub being different than the prices in the public bar. This would constitute a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.
2. **Out of code discount .** For example, offering cans of beer with a best before date that has expired while selling cans of the same brand that are within date code at a different price. This would constitute a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.
3. **Discount vouchers .** For example, a promotion where vouchers or tokens which are sold or given to potential customers where by they are entitled to a reduction in the price of certain drinks while other customers still require to pay the full price. This constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.
4. **Discount to certain customers.** For example, a promotion that offers a discount to students or OAPs while other customers pay the full price for the same drinks. This constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.
5. **Student nights.** For example, a night club advertises/distributes flyers giving details of the venue & entry fee and stating that on a Friday or Saturday night, drinks are £1 all night* .The asterisk gives the qualification for the promotion which is * *with student card*. The price of drinks is varied for students but not other customers therefore this constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.
6. **Drinks vouchers.** For example, a night club advertises/distributes flyers giving details of the venue, entry fee and stating that five £1 drink vouchers will be giving to the customer on entry. If the voucher merely entitles the customer to a discounted drink i.e. the customer uses a voucher and is only charged a £1 then unless that drink is that price for all customers then this constitutes a variation in pricing and would not comply with the requirements of Schedule 3 paragraph 7.
7. **Cheaper drinks throughout the week.** For example, a pub has a drinks promotion where the cost of all drinks is reduced from 12.30pm on a Sunday until Friday at 8pm.

Drinks are increased to " full" price from 8pm on a Friday until closing time on Saturday night. This constitutes a further variation in drinks pricing. A variation in pricing cannot occur except at the beginning of a licensing period so drinks cannot change price at 8pm if the pub is open prior to this time selling alcohol and the variation must last a minimum of 72 hours so the variation whereby the prices increase on the Friday and Saturday does not provide the

minimum 72 hours time period. This variation in pricing would not comply with the requirements of Schedule 3 paragraph 7

** Pricing of alcohol*

7 Where the price at which any alcohol sold on the premises is varied—

- (a) the variation (referred to in this paragraph as “the earlier price variation”) may be brought into effect only at the beginning of a period of licensed hours, and*
- (b) no further variation of the price at which that or any other alcohol is sold on the premises may be brought into effect before the expiry of the period of 72 hours beginning with the coming into effect of the earlier price variation.*

Irresponsible drinks promotions

8 (1) An irresponsible drinks promotion must not be carried on in or in connection with the premises.

(2) Subject to sub-paragraph (3), a drinks promotion is irresponsible if it—

- (a) relates specifically to an alcoholic drink likely to appeal largely to persons under the age of 18,*
- (b) involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks),*
- (c) involves the supply free of charge or at a reduced price of one or more extra measures of an alcoholic drink on the purchase of one or more measures of the drink,*
- (d) involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),*
- (e) encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,*
- (f) is based on the strength of any alcohol,*
- (g) rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or*
- (h) offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.*

(3) Paragraphs (b) to (d) of sub-paragraph (2) apply only to a drinks promotion carried on in relation to alcohol sold for consumption on the premises.

C.S. EHTS

APPENDIX 2**PROPOSED SUPPLEMENT TO DUNDEE CITY LICENSING BOARD
STATEMENT OF LICENSING POLICY REGARDING CHILDREN ON LICENSED PREMISES**

The following should be inserted at the end of the section of the Board's policy statement headed "Children in Licensed Premises" at pp. 11-12:-

"The Board is aware that a number of licensed premises in the vicinity of the two major football grounds at Dens Park and Tannadice wish to permit the presence of children and young persons before and after football matches. The Board would be prepared to agree to the inclusion of this in operating plans provided the children and young persons are accompanied by a responsible adult, the hours of such admission are restricted to 2 hours before kick-off and 1 hour after the conclusion of the games, subject to a maximum terminal hour of 8 pm, and the proposed terms of admission of such children and young persons are not inconsistent with any other provision of this Statement of Licensing Policy."

DUNDEE LICENSING FORUM

Secretary to Dundee Licensing Forum
Mrs Anne Singleton
21 City Square
DUNDEE
DD1 3BY

Tel: (01382) 434816

Our Ref: AMS/LM
Your Ref:

12th January 2010

Ms Patricia McIlquham
Clerk to the Licensing Board

Dear Madam

Proposed Amendments to the Licensing Board's Statement of Licensing Policy

I refer to the proposed supplements to the Board's Statement of Licensing Policy covering guidance on what the Board would be likely to view as an "irresponsible drinks promotion"; and guidance on children on licensed premises in the vicinity of the City's two major football grounds, as detailed in your Report No 569-2009 which was submitted to the Board on 19th November 2009.

I would advise you that the Forum considered these amendments at its meeting on 1st December 2009 and would comment as follows.

With regard to guidance on what constitutes an "irresponsible drinks promotion", members in general welcomed such clarification, but whilst recognising the Board's limited powers to address the issue of deep discounting/bulk purchase promotions by supermarkets in the absence of minimum pricing legislation, felt that this omission limited the effects of other efforts to reduce alcohol related harm.

The second proposal was that the following should be inserted at the end of the section of the Board's policy statement headed "Children in Licensing Premises" at pp 11-12:-

"The Board is aware that a number of licensed premises in the vicinity of the two major football grounds at Dens Park and Tannadice wish to permit the presence of children and young persons before and after football matches. The Board would be prepared to agree to the inclusion of this in operating plans provided the children and young persons are accompanied by a responsible adult, the hours of such admission are restricted to two hours before kick-off and one hour after the conclusion of the games, subject to a maximum terminal hour of 8.00 pm, and the proposed terms of admission of such children and young persons are not inconsistent with any other provision of this Statement of Licensing Policy".

The Forum expressed its view that it was particularly important to promote a positive environment if children were to be allowed in licensed premises. One of the ways in which this could be done is by the Board encouraging premises seeking such a variation in their operating plan to participate in the Best Bar None scheme. After City Centre premises, it is the premises around football grounds that the scheme wishes to target, particularly in relation to the use of polycarbonate glasses.

I hope this is of assistance.

Yours faithfully

Secretary to the Licensing Forum

SCOTTISH BEER AND PUB ASSOCIATION ('SBPA')

RESPONSE TO CONSULTATION BY DUNDEE CITY LICENSING BOARD ON 'IRRESPONSIBLE PROMOTIONS'

(All paragraph references are to Schedule 3 to the Licensing (Scotland) Act 2005)

The following responses to the consultation correspond to the numbering in the consultation document:

A.1.

The SBPA agrees that the promotion as described would contravene the provisions of paragraph 8(2)(d).

A.2.

In the SBPA's view, the supply of a free pint of beer is not, in the circumstances described, a 'reward' and does not contravene paragraph 8(2)(h), for the following reasons:

1. It does not constitute a 'reward' within the meaning of that term. According to Chambers Dictionary, a 'reward' is: 'That which is given in return for good... or in recognition of merit; or for performance of a service.' It is not apt to describe the presence of a customer on licensed premises who may have been attracted by an offer. Clearly, customers will make a decision to visit licensed premises based on cost considerations but by doing so they do not become entitled to a 'reward'.
2. The gratuitous supply of alcohol is addressed in paragraph 8(2)(b) in terms of which it is prohibited where the supply is conditional on the purchase of one or more drinks. If it had been intended to prohibit gratuitous supply on a wider basis this would have appeared on the face of the Act.

A.3.

The Scottish Parliamentary record on this is absolutely clear. Both paragraph 8(2)(c) and paragraph 8(2)(e) are designed to suppress the practice of 'upselling' and are not intended to control price.

The following are extracts from the Official Report of the proceedings of the Local Government and Transport Committee on 20 September 2005, when the provisions of Schedule 3 were under consideration:

GEORGE LYON (from the end of Column 2866): 'Amendment 34 [the introduction of paragraph 8(2)(e)] adds to the list of irresponsible drinks promotions the practice of upselling, which involves, for example **persuading someone** who has expressed an intention to order a single measure to upgrade to a double. I am sure we have all experienced that. The practice is not adequately caught by paragraph 8(2)(c) of Schedule 3... It has been suggested that the description of irresponsible promotions contained in [that paragraph] would have the additional result of introducing linear pricing, by which I mean that a double measure of a drink would have to be twice the price of a single measure and so on.

'It is clear that is not our intention. **The provisions are directed specifically at promotional activity, not pricing activity.** We have chosen to prevent the irresponsible

promotions that are listed in Schedules 3 and 4 from being carried out on licensed premises, but we have not chosen - and do not intend to dictate - the prices at which any alcohol or measure of alcohol is to be sold.' [Emphasis added.]

Accordingly, in the SBPA's opinion, the Act would be contravened if a member of bar staff actively sought to encourage a customer to 'double up' but it does not prohibit the pricing of a double measure at 50p more than the cost of a single measure.

A.4.

The reasons expressed above in relation to A.2. the SBPA does not consider that promotion described constitutes a 'reward'. Standing the reference to 'first drink', it may, however, be considered that paragraph 8(2)(b) is contravened if the free drink is conditional on the purchase of one or more other drinks.

A.5.

Again, in the SBPA's opinion, the described promotion does not involve the giving of a 'reward'. The availability of a discount conditional on the purchase of one or more other drinks may however breach paragraph 8(2)(b).

A.6.

The SBPA agrees that the promotion as described would contravene paragraph 8(2)(h).

A.7.

The SBPA considers that expression 'reward or prize' requires to be read as a whole, so that the supply of alcohol might constitute a 'reward' for beating the remainder of contestants in a competition but not otherwise.

A.8.

In the SBPA's view, 'meal deals' cannot be regarded as constituting a 'reward' for the purpose of paragraph 8(2)(h). In addition, if it had been intended to prohibit the gratuitous supply of alcohol conditional on purchases other than alcohol, paragraph 8(2)(b) would have been framed accordingly.

A.9.

The SBPA understands that this type or promotion has been withdrawn from the consultation having regard to the subsequent publication of the Alcohol etc Bill.

B.1.

The SBPA does not consider that differential pricing in different parts of the same licensed premises will ordinarily constitute a price 'variation' for the purpose of paragraph 7. What is prohibited is more than one price variation in a period of 72 hours. Assuming that the price difference is maintained, there is no second variation. If the position were to be otherwise, a hotel selling alcohol in a bar, restaurant, function suite and mini-bar, and from room service, would require to establish uniform prices in all parts of the premises. That result is far divorced from the policy intention of paragraph 7, which is to suppress short-term price discounting which is seen to lead to excessive consumption of alcohol within a limited period.

B.2.

The SBPA has no comment to make.

B.3.

The SBPA considers that *ad hoc* price reductions of the type described might be considered to breach the provisions of paragraph 7, subject to its comments in relation to **B.1.** and **B.4.**

B.4.

In the SBPA's view, paragraph 7 does have the effect of prohibiting certain types of promotions available only to a certain class of customers: for example, price reductions for pensioners on a particular afternoon during the week. However, it does not consider that all 'dual pricing' schemes contravene the Act. As explained above, what is prohibited is more than one variation within a 72-hour period. Paragraph 7 addresses a situation in which the 'headline' price of alcohol is altered during that time span, thereby encouraging customers to make their purchases in that 'window'. Where a scheme provides for the issue of a card entitling its holder to a reduction on the 'full' price paid by other customers, the differential in the price paid between the two classes of patrons exists as at the beginning of the 72-hour period. There is no second variation. The card holder always pays the discounted price; other customers always pay the full price.

B.5.

Dual-pricing for a period of less than 72 hours may, in the SBPA's opinion, breach the requirements of paragraph 7.


B.6.

Please see the SBPA's comments in relation to **A.5.** and **B.3.**

B.7.

The SBPA observes as follows. A price variation - 'the earlier price variation' - must, in terms of paragraph 7(a), be brought into effect at the beginning of a period licensed hours. A reversion to 'normal' pricing constitutes a variation: the 'further variation' referred to in paragraph 7(b). The Act does not provide that the 'further variation' may only be brought into effect at the beginning of a period of licensed hours. It simply provides that it cannot commence '*before* the expiry of 72 hours' starting with the first variation [emphasis added, of course]. The 72-hour period thus appears simply to be a minimum period for the duration of the 'earlier price variation'. It is of course appreciated that this, analysis, if correct, would serve to defeat the intention of paragraph 7.

Submitted on behalf of the SBPA by:



Hill Brown Licensing
3 Newton Place
GLASGOW
G3 7PU

13 January 2010

SUPPORT SERVICES

14 JAN 2010

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Our Ref: JCC

13 January 2009

Your Ref: BW/DCS 9/33

BY EMAIL AND LEGAL POST

Stuart Galloway Esq
Principal General Services Officer
Dundee City Licensing Board
LP - 38
DUNDEE

Dear Mr Galloway

**LICENSING (SCOTLAND) ACT 2005
MITCHELLS & BUTLERS RETAIL LIMITED
CONSULTATION ON 'IRRESPONSIBLE PROMOTIONS' AND PRICE VARIATIONS IN LICENSED
PREMISES**

Mitchells & Butlers Retail Ltd, 27 Fleet Street, Birmingham have instructed us to advise you that they have been afforded sight of and adopt as their own views the response which has today been submitted by us to your goodself on behalf of the Scottish Beer and Pub Association in connection with the above consultation.

Our client company is, of course, the holder of premises licences within the Board's jurisdiction.

We are also instructed to say that, in the opinion of our clients, the consultation has not been sufficiently publicised. They are aware that a link to the consultation papers is available on a licensing page within Dundee City Council's website. However they expect that it will have escaped the attention of a very significant number of those premises licence holders liable to be affected by the supplementary licensing policy statement to be published following the consultation.

Yours faithfully

Keep up-to-date with developments in Scottish Licensing Law: visit www.sllp.co.uk

J C Cummins R G R Davidson P J Lawson

Associates: Kirstien H Roxburgh Aileen Thomson

J C Cummins is accredited as a specialist in liquor licensing law by The Law Society of Scotland

From: Stuart Galloway/SS/dundeecity
To: Brian Woodcock/SS/dundeecity@dundeecity

APPENDIX 6

Date: Wednesday, 13 January, 2010 11:00
Subject: Fw: DUNDEE LICENSING BOARD PROMOTIONS CONSULTATION - RESPONSE

-----Forwarded by Stuart Galloway/SS/dundeecity on 13/01/2010 11:00AM -----

To: <stuart.galloway@dundeecity.gov.uk>
 From: "John Coen" <John.Coen@forwarn.com>
 Sent by: "Julie Mayhew" <Julie.Mayhew@forwarn.com>
 Date: 13/01/2010 10:49AM
 cc: "David Daniel" <David.Daniel@punchtaverns.com>, "patrick browne" <patrick.browne@Geoghegans.co.uk>
 Subject: DUNDEE LICENSING BOARD PROMOTIONS CONSULTATION - RESPONSE

FORD & WARREN SOLICITORS

Westgate Point, Westgate, Leeds, LS1 2AX MDX 706968 Leeds
 Tel: (+44) (0) 113 2436601 Fax: (+44) (0) 113 2420905
 Email: Julie.Mayhew@forwarn.com WEB site: <http://www.forwarn.com>

Our Ref: JGC/28780/10

Dear Stuart

The following is the response of Punch Taverns (Inns) Ltd and Barshelf 2 Ltd to the Board's draft consultation document - Irresponsible Promotions and Price Variations.

Both Punch and Barshelf ("Companies") welcome the Boards desire to assist the Licensed Trade by producing guidance relating to what is perceived to be irresponsible promotions and price variations.

Both "Companies" are aware of the response to the consultation produced by the SBPA dated the 13/01/10. For the most part the "Companies" endorse and adopt that response save as follows (we have adopted the same numbering system as used in the consultation document).

A. Irresponsible Drinks Promotions

1. All Inclusive Offers - We adopt the SBPA response.

2. Watch the match and if your teams wins get a free pint of beer - we adopt the SBPA response and agree that the provision of free alcohol does not contravene paragraph 7 or 8 of Schedule 3 of the 2005 Licensing Act.

3. Double Up - We adopt the SBPA response.

4. Student Nights - We adopt the SBPA response and submit that this type of promotion does not contravene paragraph 7 or 8 of Schedule 3 of the 2005 Licensing Act. To provide a free drink (as long as the provision of that drink is not conditional on the purchase of other drinks) is not prohibited. The provision of that "free" drink is included, in all likelihood in the price charged for entrance to the premises.

5. Drink Vouchers - We adopt the SBPA response and would submit that any such offer needs to be looked at in its entirety, i.e. how many discounted drinks may be purchased. Does the offer encourage or seek to encourage persons to drink more than they intended ?

6. Drinks as prizes/rewards - We agree with the SBPA response.

7. Reward Card - We adopt the response of the SBPA and contend that if the points accumulated on the card can be claimed against the cost of a meal at the venue there is no risk of the promotion being deemed irresponsible.

8. Free Bottle of Wine - We adopt the response of the SBPA. The provision of a free bottle of wine should be seen as a discount on the cost of the meal. In most cases it would be accepted that such an offer does not encourage or seek to encourage persons to consume more alcohol than they intended to. Indeed as the bottle of wine is free, the persons dining are more likely not to feel the need to consume the entire bottle.

9. Bulk Buys - We adopt the SPBA response.

B. Pricing of Alcohol

1. Offering the same drinks at different prices in the same premises - We adopt the SBPA response and agree that this practice is common place in many premises that are licensed. This practice does not in any way encourage persons to consume more alcohol than they intended to but rather reflects the surroundings in which the drinks are being consumed.

2. Out of Code Discount - We have no comment to make on this.

3. Discount Vouchers - We adopt the response given by the SBPA and would add that if the vouchers are given to a certain class of customers and are valid for at least 72 hours, this would not contravene paragraph 7 or 8 of Schedule 3 of the 2005 Licensing Act.

4. Discount to certain customers - We adopt the response given by the SBPA. We do not accept that the intention of the Government was to deem such promotions as unlawful.

5. Student Nights - We adopt the response given by the SBPA. As long as the promotion lasts at least 72 hours we do not accept that such promotions contravene paragraph 7 or 8 of Schedule 3 of the 2005 Licensing Act.

6. Drink Vouchers - Please see previous responses.

7. Cheaper drinks through the week - For the most part we adopt the response given by the SBPA but would add that as long as the price variation lasts a minimum of 72 hours and commences at the beginning of a period of licensed hours we do not believe the price variation contravenes paragraph 7 or 8 of Schedule 3 of the 2005 Licensing Act. We do accept that in the example given it is open to question which constitutes the price variation, the price charged during the week or at the weekend (given the duration of each period). We feel it could be argued that the price variation commences at 8.00pm on Friday and if that is correct it would seem to contravene paragraph 7 of Schedule 3 of the 2005 Licensing Act.

Yours sincerely

JOHN G COEN

ON BEHALF OF PUNCH TAVERNS (INNS) LIMITED AND BARSHELF 2 LIMITED

jm

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From: Stuart Galloway/SS/dundeecity
To: Brian Woodcock/SS/dundeecity@dundeecity

APPENDIX 7

Date: Thursday, 14 January, 2010 8:01
Subject: Fw: Dundee Licensing Board Promotions consultation

-----Forwarded by Stuart Galloway/SS/dundeecity on 14/01/2010 08:00AM -----

To: <stuart.galloway@dundeecity.gov.uk>
From: "Stuart Watt" <stuart.watt@belhaven.co.uk>
Date: 13/01/2010 09:47PM
Subject: Dundee Licensing Board Promotions consultation

Dear Mr Galloway,

I write to you to state that for the purposes of record, we wish to echo the views submitted by the SBPA on the matter of promotions consultation.

We are active members of the SBPA and have been involved in assisting pulling together their response the consultation.

Regards, Stuart Watt

Commercial Director, Belhaven Pubs.

Stuart Watt

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Greene King Brewing and Retailing Limited (trading as Belhaven). Registered office: Westgate Brewery, Bury St Edmunds, Suffolk IP33 1QT.
Registered number: 24511

To: Stuart.Galloway@dundeecity.gov.uk
From: Stephen Rooney <stephen.rooney@s-n.com>
Date: 12/01/2010 08:09PM
cc: patrick browne <patrickb@geoghegans.co.uk>, Ken McGown <ken.mcgowan@s-n.com>
Subject: Dundee Licencing Board Irresponsible Promotions consultations

Dear Sir,

I write on behalf of Scottish & Newcastle Pub Company, a tenanted pub operator with a number of licenced premises in the Dundee area.

I write to confirm that the Scottish & Newcastle Pub Company supports the submission made by the Scottish Beer and Pubs Association with regards to the board's consultation on "Irresponsible promotions" under the Licencing (Scotland) Act 2005.

Should you wish to discuss further please contact myself on 07884 113410.

Kind regards

Stephen Rooney
Projects Controller
Scottish & Newcastle Pub Company

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Stuart / Brian



SUPPORT SERVICES

Patricia McIlquham
 Clerk to the Licensing Board
 Floor 2, Tayside House
 28 Crichton Street
 Dundee, DD1 3RB

22 DEC 2009

THE WINE AND SPIRIT TRADE ASSOCIATION

RECEIVED

17 December 2009

Dear Ms McIlquham,

Implementation of Licensing Act (Scotland) 2005

I am writing in response to the draft consultation on irresponsible promotions and pricing which has been brought to our attention by a number of our members.

By way of introduction, the Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 320 companies producing, importing, transporting and selling wines and spirits. We campaign to promote the industry's interests with governments at home and abroad. We work with our members to promote the responsible production, marketing and sale of alcohol.

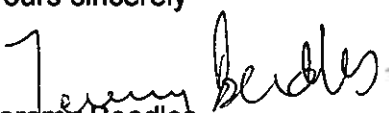
I wanted to draw your attention to the proposed measure in your draft consultation under point A9 – Bulk Buys - which suggests that Dundee is proposing to restrict supermarket promotions.

As you will be aware, the Scottish Government recently published the Alcohol Bill which will bring forward specific restrictions on promotions within the off-trade. The Bill's policy memorandum notes that "the ban on promotions that involves the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks applies only to the on-trade at present (paragraph 29). The Scottish Government has also agreed to repeal Schedule 3 paragraph 8(2)3 which was intended to be applied to the on-trade only.

As you will appreciate it would be extremely difficult for national retailers to organise differential pricing and promotional activity according to individual Licensing Boards and we are working hard with the Government to ensure that when the Alcohol Bill is finalised there will be a national consensus on how these measures should be implemented.

I would welcome the opportunity to discuss with you in more detail. To that end please do not hesitate to contact me.

Yours sincerely


 Jeremy Beadles
 Chief Executive