

REPORT TO: LICENSING BOARD - 19TH NOVEMBER 2009
REPORT ON: IMPLEMENTATION OF LICENSING (SCOTLAND) ACT 2005
REPORT BY: CLERK TO THE LICENSING BOARD
REPORT NO: 565-2009

1.0 PURPOSE OF REPORT

1.1 To advise the Board of the issues which have arisen since the implementation of the Licensing (Scotland) Act 2005 "the 2005 Act" on 1st September 2005, to summarise the action taken by the Licensing Standards Officers ("LSO's"), and to suggest possible supplements to the Board's Statement of Licensing Policy.

2.0 RECOMMENDATIONS

2.1 That the Board notes the issues which have arisen since the implementation of the 2005 Act and the action taken by the LSOs.

2.2 That the suggested supplements to the Board's Statement of Licensing Policy contained at Appendices 1 and 2 to this Report be issued for consultation in terms of Section 6(3) of the 2005 Act.

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. Under the previous Licensing (Scotland) Act 1976, there were licensed premises in the City of Dundee area. Approximately % of these premises obtained licences under the 2005 Act. Only of the premises with 2005 Act licences had failed to nominate a designated premises manager by 31st August 2009 and could not, therefore, trade from 1st September 2009 until they had nominated premises managers who had obtained personal licences. This has now been done for all premises.

4.2 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 seek 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 in this regard.

5.0 MAIN TEXT

5.1 Since 1st September 2009, the LSOs have carried out Licensing Standards inspections of over 40 licensed premises in the City. The principal issues which have been identified are:-

- non-compliance with staff training requirements;
- non-display of premises licences and other statutory notices;
- failure to provide required facilities, eg for baby changing;
- irresponsible promotions and price variations;
- alcohol displayed in off-sales otherwise than in accordance with the operating plan;
- musical entertainment taking place when not included in the operating plan.

- 5.2 To date, the LSO's have served a total of ten notices on licensed premises under Section 14(2)(a)(i) of the 2005 Act. These notices cover 30 points of non compliance relating to the categories of non-compliance identified in Paragraph 5.1 above. In accordance with guidance from the Scottish Government and also in recognition of the fact that the Act had only just come into force, licence-holders were given a degree of leeway before resort was made to formal enforcement action under Section 14. However, where matters have remained unresolved, notices have required to be issued. Nevertheless, the Head of Environmental Health and Trading Standards reports that there is a high level of compliance with the requirements of the Act.
- 5.3 One issue which has been particularly identified as requiring further discussion and clarification relates to alcohol promotions. Schedule 3 to the 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 is recommended 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 is 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 draft consultation document on irresponsible promotions and price variations is attached at Appendix I for the Board's approval.

- 5.4 Many of the provisions relating to irresponsible promotions do not apply to off-sales. The Scottish Government has indicated that it intends to address this by including specific rules for promotions on off-sales premises in an Alcohol Bill to be published before the end of this year. Until the contents of the Bill are available it is suggested that it would be premature for the Board to include any specific proposals relating to off-sales in the consultation referred to in Paragraph 5.3 above.
- 5.5 One further matter which it is considered should also be added 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, a suggested amendment to the Board's policy is set out at APPENDIX 2 to this report. This would require to be subject to the same consultation procedure as the proposed supplementary statement on irresponsible promotions and price variations described in Paragraph 5.3 above.

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 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."