CONSULTATION QUESTIONS

Please provide examples/evidence for your answers. Of particular interest will be information on the impact to business and regulators as a result of proposed changes, including information on the additional costs of any changes proposed, the impact on competition and impact on micro and small businesses. Solutions to mitigate any negative impacts are also welcome.

1. Are you responding as an:
   (a) individual □
   (b) on-trade business □
   (c) off-trade business □
   (d) members’ club □
   (e) local authority □
   (f) another business or organisation, please specify □

Advocacy organisation. SHAAP has been established by the Royal Medical Colleges and Faculties to raise awareness of alcohol-related harm and to promote solutions based on the best evidence available.

2. Do you agree that it should be illegal for adults to supply alcohol to an under 18 for consumption in a public place?

   Yes □ No □

Neither ‘yes’ nor no’.

Preventing those over 18 supplying alcohol to a person under 18 for consumption is a public place is to be commended. There is a growing body of evidence that alcohol has a disproportionality harmful impact on the brains of young people. For Example, Bava S, Thayer R, Jacobus J, Ward M, Jernigan TL, & Tapert SF (2010). Longitudinal characterization of white matter maturation during adolescence. Brain Research, 1327, 38-46.

As the consultation document indicates under the Licensing (Scotland) Act 2003 (section 105) buying alcohol on behalf of a child or young person or for consumption on a licensed premises is already an offence. A number of local authorities have already prohibited drinking in a public place.

Whilst we share the Government’s concerns about underage drinking, criminalising the supply of alcohol to under 18s may well require more consultation and consideration. The suggested changes raise a number of practical challenges. Under the current legislation, for example, if you are 16 or 17, you can buy and drink beer, wine, cider or perry if you are eating a meal at a restaurant. Would this element of the 2005 Act have to be altered if the proposed changes were made?

The consultation documents also suggests that criminalising the supply of alcohol to under 18s would mean, potentially, that parents could be prosecuted if they served alcohol to their children in a public place but that ‘the police and
prosecutors would also use their discretion to avoid overzealous enforcement’. Trying to enforce the proposed changes may be confusing and time consuming for the Police.

The tighter monitoring and enforcement of current legislation might be a first step to reducing underage drinking. SHAAP also advocates a much wider debate about the children/young people and alcohol because there is a lack of clarity around this issue. In 2009, the Chief Medical Advisor in England issued guidance advising parents not to let their children drink before the age of 15. The guidance makes 5 key recommendations:

- Children should have an alcohol-free childhood - if children drink alcohol, it shouldn't be before they are 15 years old
- If young people aged 15 to 17 years old drink alcohol, it should always be with the guidance of a parent or carer or in a supervised environment.
- Parents and young people should be aware that drinking, even at age 15 or older, can be hazardous to health and not drinking is the healthiest option.
- If children aged 15 to 17 are to drink alcohol they should do so infrequently and on no more than one day a week - they should never drink more than the adult daily limits recommended by the NHS.
- The importance of parental influence on children’s alcohol use should be communicated to parents, carers and professionals support services should be made available for children and young people who have alcohol-related problems and their parents.

3. **Are there specific circumstances in which this should not be illegal?**

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<tr>
<th>Yes</th>
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<tr>
<td>Neither, ‘yes’ or ‘no’. The enforcement of any legislation to criminalise the supply of alcohol to under 18s will present a challenge. SHAAP recommends additional guidance to parents and young people on the specific harm alcohol poses to the young, coupled with stronger enforcement of the current Licencing Act.</td>
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4. **Does section 97 form a suitable basis on which to provide extended police power?**

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<th>Yes</th>
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5. **Should the procedure under section 97 be extended to allow the police to apply to the Board for the closure of premises within a geographical area, or should the police instead have to apply to the Sheriff for approval of restrictions in a wider geographical area?**

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<th>Yes</th>
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6. Should exceptions be allowed within the geographical area, for example for pre-arranged wedding receptions, directors’ boxes/corporate hospitality, etc.?

Yes ☐  No ☐

No comment

7. Should Boards be able to impose additional conditions to apply variations to opening hours, for some or all licensed premises, to restrict the sale of alcohol around football matches or other events likely to be associated with disorder?

Yes ☐  No ☐

No comment

8. Do you have concerns about this proposal, and if so, what are they?

Yes ☐  No ☐

No comment

9. Should Boards be able to apply new licensing conditions to all existing licensed premises without the need to consider each individual licence?

Yes X  No ☐

Yes, subject to the restrictions outlined on page 14 of the consultation document and if there is a clear public health gain in doing so.

10. What procedures should apply before such conditions are applied and what rights of appeal would be appropriate?

Yes ☐  No ☐

As above, there should be clear and demonstrable evidence of the public health benefits to be achieved.

11. Should the legislation be amended so that Boards are asked to consider whether an applicant is a ‘fit and proper’ person?

Yes ☒  No ☐
12. Should there be a definition of ‘fit and proper’ and if so, what should it consist of?

Yes ☑ No ☐

Do Committee members have an opinion?

13. Should Boards be placed under a statutory obligation to promote the licensing objectives?

Yes ☑ No ☐

SHAAP agrees that it would be helpful to strengthen the licensing objectives to ensure that they are clearly identified in law as being the overriding principles governing the Act, and given similar weight to the licensing objectives in the equivalent English legislation. Section 4 (1) of the Licensing Act 2003 (England and Wales) states a licensing authority must carry out its functions under the Act with a view to promoting the licensing objectives.

14. What impact would this have on the work of Boards?

Yes ☐ No ☑

We believe that placing Boards under a statutory obligation to promote the five licensing objectives will ensure that these are promoted in licensing statements.

15. Should Boards be placed under a statutory obligation to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives?

Yes ☑ No ☐

16. Should the report be submitted to Scottish Ministers, the Local Licensing Forum, and/or some other body?

Yes ☑ No ☐

It would be helpful for the work of the Local Licensing Forum if they could receive this information. As Licensing Boards already provide annual statistics to the Scottish Government, perhaps the content of the report would be included as well?

17. Should Boards be placed under a statutory duty to gather and assess information on each of the licensing objectives in the preparation of their statement of licensing policy?
18. What benefits would such a statutory duty bring?

Imposing a statutory duty on Board’s to gather and assess information on each of the five licensing objectives, in the preparation of their statement of licensing policy, would help ensure that Board’s policies were based on the best available evidence and, therefore, less likely to be successfully challenged.

19. Should the period that a statement of licensing policy is in force be extended to five years?

Under the current arrangements, a licensing policy that has been subject to a full consultation can be challenged in any individual appeal on the basis of a narrow set of facts in a legal process in which consultees have no opportunity of involvement. It is our view that having a licensing policy continuously under threat of legal challenge does not serve the public interest. It is recommended that increasing the period of the licensing policy from three to five years would provide more stability in licensing policy and practice.

20. Should there be a statutory ouster clause limiting appeals against an adopted licensing policy statement outside its introductory period?

Introducing a statutory ouster clause limiting appeals against an adopted licensing policy statement, similar to Section 237 of the Town and County Planning (Scotland) Act 1997, would provide greater stability in licensing policy and practice.

21. Is there currently an issue with licence holders who do not have a reasonable command of English?

No comment.

22. If there is a problem, what would be your preferred means to address this?

No comment.

23. Would expanding the scope of the Act from ‘sale’ to ‘sale and supply’ address the uncertainties created by Brightcrew?
24. Would placing a general duty on Boards to ’promote’ rather than ‘have regard’ to the licensing conditions address the uncertainties created by Brightcrew?

Yes ☐ No ☐

No comment.

25. Would making clear that the Act allows regulation of the sale of alcohol or other activities in the licensed premises within licensed hours address the uncertainties created by Brightcrew?

Yes ☐ No ☐

No comment.

26. Would you suggest another approach to resolve the uncertainties arising from Brightcrew?

No comment.

27. Do you agree that there should be additional restrictions on the operation of members’ clubs?

Yes ☐ No ☐

No comment.

28. Do you agree that breach of provisions within a club constitution relating to the sale of alcohol should become a breach of licence allowing the Licensing Board to review the licence?

Yes ☐ No ☐

No comment.

29. What would be the resource implications for local authorities and clubs if the constitution had to be incorporated into the licence?

Yes ☐ No ☐

No comment.
30. Do you have any other proposals to tighten up the regulation of members’ clubs, for example through additional mandatory conditions?

Yes ☐ No ☐

No comment.

31. Should the Scottish Government provide additional guidance or regulation for Licensing Boards on the conduct of hearings and why?

Yes ☐ No ☐

No comment.

32. Can you provide examples of particularly good or bad practice at Board hearings?

Yes ☐ No ☐

No comment.

33. Should Board meetings be held in public, in their entirety?

Yes ☐ No ☐

No comment.

34. What other issues should be considered for inclusion in any guidance on Board procedures and why?

No comment.

35. Should the Scottish Government introduce a national licensing policy statement and why?

Yes ☒ No ☐

A national licensing policy statement would be beneficial to local licensing Board’s and help to integrate local and national strategies for managing alcohol-related problems.

36. What sort of issues should such a statement cover?

In the same way that the national planning framework serves as an overall guide to local planning statements and decision-making, a national licensing statement should refer to the Government’s overall objectives in reducing alcohol harm, including negative health impacts, the supply and availability of alcohol and
the impact on third parties (for example, children and families and the wider community).

37. Should the licensing objective be amended to say “protect children and young people”?

Yes ☒ No ☐

SHAAP agrees with the proposed amendment because it promises to give Licensing Board’s greater scope when looking at the implications of young people accessing and using alcohol. Similar to our response to Q.1, we believe that there is growing evidence of the potential harm done to the adolescent brain by alcohol; the amendment would go some way to addressing this concern.

38. Does the current mandatory condition in relation to Challenge 25 create difficulties?

Yes ☒ No ☐

There should be a requirement to adhere to the ‘Challenge 25’ policy rather than there just being a requirement to have the policy.

39. Do you agree that the duty as presently drafted is unworkable and why?

Yes ☐ No ☒

No comment

40. (a) Do you prefer the proposal that the duty should be amended to read that ‘when a premises licence holder is aware (or should reasonably be expected to be aware) of a change…..’

(b) Or do you prefer the proposal to adopt the wording from the Civic Government (Scotland) Act 1982 “whereby “The activity to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself”.

(c) Alternatively do you have any other suggestions?

No comment

41. In common with the premises licence holder and interested parties, should a premises manager have vicarious liability for the offences of employees?

Yes ☐ No ☒
42. Should section 7 of the 2005 Act, the duty to assess overprovision, be amended to state that the locality for assessment of overprovision can be the entire board area?

Yes ☒ No ☐

Yes, some important indicators of alcohol-related health harm are measured at a licensing board level. If boards are required to protect and improve public health, then it follows that the ready availability of alcohol across their whole geographical area is a factor they must consider.

43. Would this make it easier for Boards to assess overprovision?

Yes ☒ No ☐

Such a change should make it easier to assess the public health impact of overprovision as it is difficult to link public health data to individual premises and/or small geographical areas.

44. Should section 7 of the 2005 Act, the duty to assess overprovision be amended, to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises?

Yes ☒ No ☐

Yes, increased capacity can expand the supply of alcohol in the absence of any change in the total number of alcohol outlets.

45. Should the Scottish licensing regime apply to orders dispatched from out with Scotland?

Yes ☐ No ☐

No comment

46. If this were introduced, would it be possible for the police and local authorities be able to carry out meaningful compliance and enforcement action?

Yes ☐ No ☐

No comment

47. Should all garages be refused a premises licence?
48. What, if any exemptions should apply?

No comment

49. Can you suggest an alternative approach which would address concerns?

No comment

50. Are you aware of genuine issues of hardship to applicants caused by delays in Boards hearing cases following the Local Government elections?

Yes ☐ No ☐

No comment

51. If so, what would be your preferred approach to address this issue of alcohol licensing?

No comment

52. Do you have further suggestions for reform?

No comment