

Consultation on:

Update of The Licensing (Procedure) (Scotland) Regulations 2007

Summary of responses

Criminal Law, Practice and Licensing Unit

October 2018

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CONTENTS

Introduction	Page 3
Executive summary	Page 3
Question 1: Summary of responses	Page 5
Question 2: Summary of responses	Page 20
Question 3: Summary of responses	Page 24
Question 4: Summary of responses	Page 27
Next Steps	Page 29

Introduction

1. The Licensing (Scotland) Act 2005 regulates the functions of Scottish local authorities and Licensing Boards in relation to licensing the sale of alcohol. The Scottish Ministers have powers under that Act to make secondary legislation in connection with aspects of the alcohol licensing regime.
2. The Licensing (Procedure) (Scotland) Regulations 2007¹ (the ‘Procedure Regulations’) is a piece of secondary legislation which sets out various procedural matters.
3. The Procedure Regulations came into force on 1st February 2008 and have not been amended since their introduction. The Scottish Government continues to work towards simplifying and improving licensing law and practice, which includes reviewing regulations to ensure that they are fit for purpose.
4. In reviewing the Procedure Regulations, the Scottish Government carried out a consultation to invite views from stakeholders and members of the public to assist in their considerations.
5. This summary presents a summary of findings from the analysis of responses to that consultation.
6. There were some comments and recommendations received from respondents which relate to matters which fall outwith the scope of this consultation. These have been noted and will be given consideration by the Scottish Government.
7. The Scottish Government would like to thank all respondents for their contributions.
8. Where granted permission, responses have been published on the Scottish Government Consultation Hub website.
[Select here to view published responses](#)

Executive Summary

9. The consultation ran from 14th March to 6th June 2018. Fifty responses were received in total, of which forty three were received online, via the Scottish Government’s Consultation Hub, and a further seven were received by email.
10. There were twenty one responses received from individuals. The remainder were from organisations, including:
 - Community Councils
 - Local Authority Councils

¹ SSI 2007/453.

- Scottish Community Safety Network
 - Licensing Boards
 - Alcohol and Drug Partnership of East Ayrshire Council.
 - NHS – Public Health Department
 - Scottish Health Action on Alcohol Problems (SHAAP)
 - UK Hospitality
 - Scottish Beer and Pub Association
 - Scottish Consultants and Specialists in Public Health Alcohol Special Interest Group
 - Alcohol Focus Scotland
 - Association of Convenience Stores and Scottish Grocers' Federation (Joint response)
 - Law Society of Scotland
11. Eighteen respondents provided approval for their name to be published together with the name of their organisation (where relevant). Twenty five respondents wished for their name to remain anonymous, which included those who did not want their personal name published alongside their organisation's reply. Seven respondents did not want their response to be published.
12. The consultation set out four, primarily qualitative, questions relating to the current Procedure Regulations. In particular, views were sought specifically in relation to neighbour notifications and provisions other than those relating to neighbour notifications. Respondents were also provided with an opportunity to outline any additional concerns they may have regarding the Procedure Regulations and to provide examples of good practice.
13. Some respondents did not respond to all four questions in the consultation.
14. An analysis of the question specific replies follows the common themes summary below.
15. Common themes

Common themes have been identified from the responses. These include:

- complex law and procedures.
- provisions re neighbour notifications - fit for purpose.
- change the meaning of “neighbouring land” to increase the distance (range of options suggested).
- clarification required re “notifiable interest” (owner of land)
- use of digital approach - including social media; Licensing Portals; and “Tell me Scotland” website.
- display of notices – (more prominent; user friendly; size; colour; and more detailed information re application)
- notification periods – too short; extend (range of options suggested); no evidence to extend; and concerns re burden on business.

- occasional licences – more scrutiny; and amend to reflect current statutory position
 - amend/remove transitional provisions
 - prescribe/extend period to issue a statement of reasons
 - concerns re cost and resource implications
16. The Scottish Government's next steps are set out at the end of this document.

Question 1 Responses

17. The first question in the consultation asked;

Should the provisions in the current Licensing (Procedure) (Scotland) Regulations 2007, specifically relating to neighbour notifications, be updated?

- Yes
 No

18. The respondents were firstly asked to answer "Yes" or "No" to question 1. Thirty eight of whom replied "Yes" and eleven said "No". One of the respondents did not respond to this question.
19. They were thereafter asked to explain their answer giving consideration to the following:
- Are the current provisions relating to neighbour notifications fit for purpose?
 - In what way should parts relating to neighbour notifications be amended?
 - What would be the likely impact for local communities, the trade and the public?
20. There were forty seven responses to this part of the question.

There were some general comments received within the responses to this question, which mainly related to issues about the licensing regime and community engagement in general, such as the examples in the paragraph below . There were also submissions about neighbour notification arrangements in general (paragraph 22) and some more specific comments were received in respect of particular provisions within the regulations (paragraphs 23 to 36).

21. General comments in response to question 1

- UK Hospitality stated "Alcohol licensing has gone through numerous changes since the introduction of the Licensing (Scotland) Act 2005. Changes have been made via the Alcohol etc. (Scotland) Act 2010, Criminal Justice and Licensing (Scotland) Act 2010, and most recently

the Air Weapons and Licensing (Scotland) Act 2015. In addition to this primary legislation, the licensing regime is also affected by a range of secondary legislation.

Such regular changes and amendments to the licensing system creates uncertainty for both operators of licensed businesses and those responsible for enforcing the regime. We are of the view that enough amendments have been made to licensing, and are not supportive of further changes – especially without a strong evidence base.

We believe that continuing certainty for licensed businesses and enforcers is beneficial for the effective operation of the licensing regime in Scotland, and a focus on partnership working between the trade, local communities, police, and licensing boards is the best way forward rather than continued changes to licensing legislation”.

- Alcohol Focus Scotland (AFS) highlighted that during the passage of the Air Weapons and Licensing (Scotland) Act 2015, the Cabinet Secretary for Justice, Michael Matheson, commented that he was aware of work on community engagement commissioned by the Glasgow Centre for Population Health, and wanted this work to be taken into account when the procedure regulations were being reviewed. AFS also provided the [findings](#) of that community engagement work, to help evidence their response to this consultation.

22. General comments re neighbour notifications

The following organisations and an individual made general comments about neighbour notifications. The first two organisations are content that the procedure regulations are wholly sufficient and fit for purpose, whereas the individual respondent and another organisation believe that they should be amended:

- It is the view of West Dunbartonshire Licensing Board that the current provisions relating to neighbour notifications are wholly sufficient, in that any person directly affected by the operation of licensed premises is notified of any application, and any other person who might have an interest in the premises can be notified of the application either via the site notice requirement and also via the Council’s Website. In addition, the current system does not add any unnecessary burden on Licensing Board staff and has operated well since the transition to the 2005 Act commenced in 2008.
- The Scottish Beer and Pub Association are firmly of the view that the current provisions are fit for purpose, in that they provide a necessary balance between informing local residents of developments in their locale, without unduly negatively impacting economic growth and job creation.

"We believe the current procedures for neighbour notifications to provide adequate awareness of licensing changes in the local area and would warn that any changes could be disruptive to licensees, costing potential investment and jobs.

Scotland's on-trade, the majority of which are small businesses, are already facing a host of economic challenges and pressures which is impacting the viability of running a pub, adding to the administrative burden and prospect of further delays would not be welcomed.

Furthermore, while we appreciate and support the drive towards greater community engagement - pub's after all, are hubs of communities across the country - but it is unclear what potential benefits would be derived from changes while the negatives are clear to see".

- An individual respondent stated "I have worked in the licensing Section for around 10 years or so and feel as though the current procedure, although well intended, is not fit for purpose".
- Scottish Health Action on Alcohol Problems (SHAAP) stated "Yes, they should be updated, because the current provisions relating to neighbour notifications do not provide for sufficient levels of community consultation and input. The regulations relating to neighbour notifications should be amended to help support improved community engagement; in particular, by making improvements to matters such as notification distances, notification timescales and signage. Similar consideration should also be given to the accessibility of information which is posted online".

23. Specific comments re particular regulations related to neighbour notifications

Regulations 3, 4, 6, 7, 8, 9 and 18 of the Procedure Regulations outline provisions on neighbour notifications, and the following comments on those provisions were made by respondents.

24. Regulation 3 - Meaning of "notifiable interest"

- Two respondents suggested the meaning of "notifiable interest" should be extended to include the owner of the land, rather than just the occupier of the land. One of those responses was from a community council and suggested changing the wording to "...if that person is the owner or occupier of that land."

The same community council highlighted that this may be particularly important in rural areas where Landowners may not be the 'occupier' of the neighbouring land but may have relevant interest in the application and would wish to be notified (e.g. developers, farmers, etc.). The other response was from an individual who suggested that "whilst it can be difficult to know the exact ownership of land in rural areas, more can be

done to ensure all those with an interest are notified - for example, a requirement that if ownership is unknown, a notice is attached at all entry ways to the land".

- Two other responses, from a local authority council and an individual, suggested that in addition to notifying those included in Section 21(1)(a) of the Licensing (Scotland) Act 2005, such as the community council, the relevant health board, the police etc. that now that there are other active community groups operating there may be an opportunity to widen this aspect of the notification process to consult with wider groups, such as local area partnerships, where those are established.
25. In addition to the above, the following comments in relation to regulation 3 were included in submissions from respondents while answering Question 2.
- The Scottish Community Safety Network think "a natural consequence of changing the definition of 'neighbour' - is on the definition of 'notifiable interest'. Those with 'notifiable interest' should be more than individuals that "occupy that land"".
 - West Lothian Licensing Board stated "Clarification of the current scope of this regulation would be welcomed by the Board. There is no definition provided in the regulation (or elsewhere) of what categories of person would fall to be considered as the 'occupier' of land. For example do the following categories fall to be considered within the scope of the regulation as 'occupier of that land':-
 - A landlord of a property that lies empty
 - The owner of land that lies unoccupied

Where a tenant is in place for any given plot of land, is the 'occupier of the land' the tenant? or is it the landlord or is it both? How is 'occupation' determined - is it by virtue of use or is it by virtue of ownership?

If landlords are not deemed to have a 'notifiable interest' consideration should be given as to whether this should be reconsidered given that landlords have a legitimate interest in matters affecting their property. Of course any widening of the scope of the regulation will inevitably increase administrative costs for the Board in processing applications due to an increased number of potential 'neighbours' that will be involved in the process. In addition, this would involve the Board in the meeting the cost of checking the land register more frequently. Any such increase would need to be accompanied by improved guidance from the Government to promote a better understanding of the licensing system amongst the wider public. Given the current climate of financial restraint affecting local government the Board would be extremely concerned at any changes to the regulations that resulted in an increased administrative and cost burden on the Council. The Board would observe that, in turn, this would place a pressure on the Board to

recoup such increased costs through the fees charged to applicants and premises licence holders”.

26. Regulation 4 - Meaning of “Neighbouring land”

Thirty two respondents made comments specifically about this particular regulation when answering question 1, which included -

Twenty two of those respondents who were in favour of extending the distance stated in the meaning of “neighbouring land” (currently “within 4 metres”) and provided comments/explanations for their answer, which included some suggesting –

- a rigid distance is not feasible in more remote towns or villages.
- the distance should be widened to include properties across the street.
- it would benefit the community to extend as licensed premises may have an impact on residents within a wider distance.
- there should be no barrier of distance for objectors involved as you could still be affected by antisocial behaviour from a premises in the next street.
- smoking on the street outside the premises can cause extra noise and disruption well beyond the 4 metre zone.
- should be broadened to ensure all properties that share a physical boundary with the proposed licensed premises.
- too restrictive and woefully inadequate.
- especially in densely populated residential tenemented areas.
- there is no requirement to vary this definition in relation to the scale, capacity and purpose of a licensed premise or to the proposed opening hours.
- Alcohol Focus Scotland commented that “4 metres is reflective of the traditional approach to licensing that focused on town centre disorder and on - licence premises. Alcohol consumption and purchasing patterns have changed dramatically over the past few decades”.
- East Ayrshire Licensing Board commented that there have been occasions where they have been contacted by neighbours (outwith 4m) who thought they should have received notification of an application
- the City of Edinburgh Licensing Board intimated that it has sent neighbour notifications to all properties within 10 metres for a number of years.

Several suggestions were made by respondents in respect of alternative options, which included having a more flexible approach, suggestions of specific potential distances from the premises or utilising particular types of areas which are already defined to assist in the determination of who should be notified, such as -

- A range of proposed distances from 10 metres (Taking account of neighbours across the road) to an 800 metre zone (compliant with some academic studies in their measurements of availability).

- within a defined geographical boundary such as a datazone or postcode.
- the Scottish Indicator of Multiple Deprivation zone which the licensed application is in.
- a smaller radius for commercial areas/city centres (although still always greater than 4m), and a larger radius for rural and remote areas. This could be determined, for example, using the Scottish Government Urban Rural Classification.

Other respondents comments included -

- a statement from Renfrewshire Licensing Board which said “should the radius be increased, the Board would be concerned if this were to a radius of 50 metres, as was proposed for inclusion in Dr. Simpson’s Bill in 2015. Given the likely administration occasioned by an increase in the radius, particularly in built up areas, the Board is of the view that, if it is felt an increase in the radius is required, this should be restricted to no more than 20 metres, which is the radius used in the planning regime. The Board also considers that such an increase should only apply to new premises licence applications and not to applications for major variation.
- a submission from a community council who noted that “Planning Legislation Neighbourhood Notification and Publicity sets a limit of 20 metres. (Planning Circular 3/2013: Regulation 18). It is unclear why Licensing Regulations specify a much smaller radius than planning. To be truly effective we recommend that the licensing notification zone should be increased to 100 metres. We also recommend that any new notification zone should take into account the capacity, scale, activities (e.g. live and recorded music) and licensed hours, both on and off sale in licensing applications”.

Ten of the respondents who specifically mentioned this regulation felt that there was no need to update this particular provision and provided comments/explanations for their answer, which included -

- entirely fit for purpose and should not be increased.
- do not see the need for any amendments as in my community the situation is acceptable.
- adequate as stands.
- see no need to change.
- believe the current neighbour notifications are sufficient.
- the current four metres distance is reasonable and proportionate.
- any increase to the 4m neighbour definition would be unwieldy and arguably would not add anything to the process.

Many of these ten respondents highlighted resource and cost implications, which included comments such as –

- this could cause a massive additional burden on Licensing Board staff, in particular when considering major variation applications.
 - significant and detrimental impact on Licensing Board staff.
 - substantially increase the administrative burden on local authorities at a time of increased pressure on local government budgets.
 - would increase the burden on the already stretched resources of local authority teams who deal with the administration of the licensing system.
 - in some town centre areas extending the four metre rule even by a small distance would lead to significantly increased administrative costs due in the most part to the ever increasing costs of postage.
 - West Dunbartonshire Licensing Board intimated that “the important task of ensuring that neighbours are notified of applications is carried out by Licensing Standards Officers. If the 4m level was to be increased, this would increase the number of notifications that would require to be carried out, thus distracting Officers attention from other duties” and also said that it was “not aware of any documented cases where the current level has been shown to be insufficient, or where the rights of any party have been restricted as a result of the 4m level”.
 - The Law Society of Scotland highlighted that an extension was previously proposed and scrutinised by Parliament when the Licensing (Scotland) Act 2005 Act was originally debated and a 50m square radius was rejected. In urban city centres, this could mean sending up to 500 letters and they considered this an unfair burden to impose.
 - An individual respondent posed the question “would there be funding to support this increased workload - who would supply this?”, whilst another Licensing Board suggested that the resource implications would inevitably have to be passed on to applicants and licence holders by way of increased fees.
 - Perth and Kinross Council suggested the regulations require to be updated, stating “Remove the requirement for neighbourhood notification as the application is advertised on the web and also a site notice is displayed which is sufficient. Alternatively put the onus back on the applicant and they should notify the neighbourhood and provide evidence of this”.
27. In addition to the above, the following comment in relation to regulation 4 was provided by a West Lothian Licensing Board while answering Question 2.
- “The Board notes that any widening of the scope of the regulation, by increasing the four metre rule, would inevitably increase administrative costs for the Board in processing applications due to an increased number of potential 'neighbours' that will be involved in the process”.

28. *Regulation 6 - Publicity to applications*

Respondents made comments specifically about this particular regulation, which included –

- suggestions from an individual that publicity should “Incorporate a more ‘digital’ approach when informing people within that vicinity” and from a community council who stated “Publicity requirements for licensing applications need to be radically overhauled to fully utilise digital advances and developments since 2005”.

However, some respondents expressed concerns regarding the use of websites. suggesting that they often provide a plethora of information, which is very useful but it can be very difficult to navigate and find exactly what you are looking for.

- One respondent recommend that the advertising of licence applications on local council websites should be more prominent, for example, featured on a news section, or the front page. Another said that “It is not reasonable to expect people to know to look for applications on the licensing board website”.
- Alcohol Focus Scotland suggested that there is scope within the regulations to set out examples of good practice with regards to website posts, and to encourage the innovative use of new media, This could also help to increase the accessibility and visibility of occasional licence notices, which are currently only published on the board's websites, meaning they will likely only be seen by those people who are already actively looking for them. Making it easier for people to identify applications of interest may help increase opportunities for groups not traditionally well represented in the licensing process, such as young people or people in recovery, to express their views.
- The Alcohol and Drug Partnership of East Ayrshire Council recommended “In the interest of making the publicity of these applications more effective, accessible, and easy to find it should be published on a social media channel”, with a suggestion to use the local authorities' twitter/Facebook page.
- Other respondents suggested that social media would provide more effective advertising and that informing of licence applications will increase public awareness, knowledge and engagement with the licensing processes.
- A further recommendation from an individual respondent suggested that the regulations should state in 6(1)(a) that notice should be available on the local board's website and published by associated social media.
- The same individual respondent suggested that consideration should be given to a licensing distribution list in each local authority area members of the public can join to receive notification of all licensing applications in their local authority area. Suggesting this would be a simple, low cost and resource way of ensuring maximum community

participation.

- The Alcohol and Drug Partnership of East Ayrshire Council commented that their local Newspaper does publish applications but highlighted that these are often as far back as page 30, and can have a substantial financial cost to it.
- A Community Council response suggested that resources need to be made available to licensing Departments to speed up digitisation so that they can develop and implement Licensing Portals similar to those used by the Planning Department in Edinburgh. The Edinburgh Planning Portal is fairly user friendly and allows any interested party to view, upload and print all documents relevant to planning applications in the city.

Several respondents made comments relating to the minimum 21 day period by which objections or representations in respect of applications may be made to the Board, which included -.

- Eight respondents saying that they felt that the current 21 day period was too short, with one respondent highlighting it was unacceptable, especially when postal methods are being used. Another suggested it was too short for people to respond, for instance if they are on holiday for two weeks. Others included reasons such as, extended periods would allow community councils the opportunity to discuss at their meetings (they are unlikely to meet more than once a month and some meet less often at certain times of the year); to allow interested members of the community more time to seek the views of other local residents, prepare contributions, compile a meaningful objection/representation; and make appropriate organisational arrangements to appear at the board to defend their contribution in person.
- Some respondents who felt that the period was too short suggested it be extended to various periods. These included suggestions of 28 days (consistent with equivalent requirements for civic government licensing as set out in schedule 1 of the Civic Government (Scotland) Act 1982), one month, 42 days and 2 months. One community council suggested that notices should be displayed as per the planning requirements, for the full period required.
- Renfrewshire Licensing Board referred to a previous Bill where it was proposed that the 21 day notification period be increased to 42 days to allow improved community engagement. They said that the Board would have a neutral view in relation to this.
- The Law Society of Scotland intimated that they would have concerns about any extension to the 42 day period, stating “This would presumably deal with the lay-objectors who lodge late objections.

Again we are unaware of any substantive issue here since there are procedures by which late objections can be handled, so there would still be a process to deal with such matters.

We understand that there can be issues, perhaps on occasion, for larger institutions or organisations to become aware and to make objections on time. However they do have professional processes and advisers to lodge objections timeously and within the current timescales. Regulation 8 of the Procedure Regulations refers to periods for the Board to notify applications. Where there has been a suggestion made that certain community councils may be advantaged by making such changes, with the use of email it is possible to obtain responses to the applications without the need for formal meetings.

There is a balance to be maintained between the time spent in considering applications and the inevitable time required for completion of the necessary administrative and other processes. If further obstacles are to be introduced, we would repeat our concerns that would increase the burden on applicants arising from the notification process. That would disproportionately affect the operation of that important balance. At times, it appears that the current period may be too long. Any changes lengthening the process would have an impact on businesses and how they can, and do, run”.

29. In addition to the above, the following comments in relation to regulation 6 were provided by respondents while answering Question 2.

- West Dunbartonshire Licensing Board recommended that paragraph (1)(a) of Regulation 6 be expanded to allow for applications to be advertised on the “Tell Me Scotland” website, as well as the Licensing Board’s website. They said that this change would allow for the wider circulation of the notification of applications and would act as a ‘back-up’ for times where Council websites might be experiencing technical difficulties. This would be likely to have a positive outcome for local communities and the public, and wouldn’t be likely to impact negatively on the trade.
- Renfrewshire Licensing Board believe there is a case for amending Regulation 6 and the prescribed form of notice in schedules 1 and 2 of the Regulations to allow for contact details of a suitable officer of the Licensing Board to be included. This would allow parties to make further enquiries with that officer as to the procedure for objections and in relation to the statutory grounds of objection. Alternatively, the prescribed form could be updated to include information on the grounds of refusal to assist the public as to what material may be relevant to the Licensing Board on considering the application.
- West Lothian Licensing Board advised that all premises licence applications and non-minor variation applications under the 2005 Act are publicised on their website. The Board considers that digital means

of publicity is preferable to advertising a notice in a newspaper due to lower costs and the recognition that increasingly in this digital age the public more frequently access information and news through the web/internet as opposed to newsprint. It is considered that this is the most effective method for achieving maximum publicity across the wider community.

However the Board also recognises that such digital means of communicating with the public may exclude some members of the public who do not access digital sources and continue to access news and information from traditional sources such as local newspapers.

The Board notes the requirements of paragraph (4) of the regulation as to what must be specified in the notice. The Board complies with this paragraph but also includes in the notice comments describing the nature of the application, where it is a variation application this would be comments describing the nature of the variation. The Board believes that this allows members of the public to quickly grasp what the application is about and to make a more informed judgement about whether to lodge an objection or representation.

- A community council suggested that “a copy should be sent to the Secretary of the associated Community Council, with additional emailed copies to members of the CC who have notified the Council of their specific interest in Licensing. This would assist the CC in consulting with neighbours etc. in its consideration of the application”.
- The Scottish Community Safety Network stated “In order for citizens and communities to become more engaged with this process and for the process to be more transparent than it currently is, the provisions around 'publicity' (Section 6) need to be altered. We would welcome a) much wider notification areas in line with the new definition of 'neighbour' and b) wider means of publication for example on a central database, social media, notification to community groups such as community councils. This will place an additional burden on the Licensing Boards / applicants / licensing forums / Local Authority officers but we think this is outweighed by the positive impact on communities and the whole licensing process”.

30. Regulation 7 - Display of notice

Respondents made comments specifically about this particular regulation, which included –

- A joint response from the Association of Convenience Stores and the Scottish Grocers' Federation included the following comment – “Convenience retailers in Scotland have not raised concerns about the current licensing procedure regulations, and as such we do not believe that any changes to the current procedure for notification of

applications are required. However, we would have concerns about proposals for extending the period for displaying notice of applications".

- The Scottish Beer and Pub Association expressed particular concerns about extending the period stating that "an extension to the required time allowed for objections relating to neighbour notifications would bring a host of negative consequences without any real potential benefits. There is no evidence to suggest that the current 28 day limit stops anyone from objecting or that an extension would increase community awareness. It would very clearly present challenges for businesses which could face substantial delays before they are able to start trading or apply a change to their current business. This would also create added uncertainty to the Scottish market, potential impacting on investment".
- Several respondents indicated that notices needed to be more prominent to attract the attention/interest of passers-by and should be more user friendly.
- Some respondents raised concerns about the existing notices (as set out in schedules 1 and 2) for example that they were unappealing, the form and text could be larger, it could be made clearer that they were public notices, and that some people would find them difficult to read.

There were a number of suggestions from respondents for improvement, which included –

- the term "conveniently be read" should be more clearly defined in the regulations.
- regulations could be further adjusted to require the site notice to be displayed on the exterior of the premises.
- it should be specified that notices be placed on or near the premises such that they are visible from all public thoroughfares adjacent to the premises.
- notices should be displayed as per Planning requirements, attached to a nearby lamppost or similar, on or by a public highway, for the full period required.
- increasing the size of the notice to a minimum of A3.
- giving further consideration to the visual elements, such as headlines, and type sizes that are used (e.g. using subheadings) and simplifying the information that needs to be displayed.
- could include a "why this notice is important" statement and provide details of where people can access support or advice such as the LSO for the area.
- ensuring that they are written in plain, accessible English/language.
- notices should be on coloured paper or of a specific design so that they can be differentiated from the numerous other notices that are publicly displayed in city centre locations.

- schedules 1 and 2 of the Regulations should be updated to include more detailed information in respect of individual applications. (This would ensure that relevant information is immediately available to neighbours to assist their understanding of the intended operation of the proposed licensed premises or changes to existing premises).
 - occasional licence applicants should have the same obligation as those that apply for a premises licence, to display a notice at or near the premises to which the occasional licence applies. However, they believe there should remain an exemption to this for occasions when this amount of notice cannot be met e.g. funerals.
31. In addition to the above, the following comments in relation to regulation 7 were provided by respondents while answering Question 2.
- An individual respondent suggested that "Notices of application" should be prominently displayed on the premises being used for the sale of alcohol as well as notices in public buildings like libraries, community centres etc.
 - Renfrewshire Licensing Board suggested that in the context of a review of the Regulations, consideration may also be given to removing the transitional provisions which are no longer required, which includes regulation 7(7).

32. Regulation 8 - Periods for Board to notify applications

Some respondents provided comments under this particular heading, perhaps under the impression that this regulation related to the period by which objections or representations in respect of applications may be made to the Licensing Board. Please note that those comments have been included in this summary under Regulation 6.

- One respondent highlighted that regulation 8(3) refers (in the present tense) to applications received before 1 Sep 2009 which no longer seems relevant.

33. Regulation 9 - Documents to accompany notice of premises licence application

Five respondents made comments specifically about this particular regulation, when answering question 1, which included -

- One community council suggesting a proposed amendment to the wording of regulation 9(2)(b) to ensure that neighbours likely to be affected by a premises licence application would be provided with all the information on which to base their decision whether to object to that application. They also suggested that an additional provision should be added at 9(1)(c) to cover instances where due to

organisational or technical reasons councils are unable to provide operating and layout plans or links to web pages.

- Another community council suggested that the operating plan and layout plan should be sent to the relevant people or a website should be given for accessing these documents.
 - One individual respondent highlighted that the online web page that they use only lists basic information and does not allow the opportunity to view the associated documents. This person was aware that other local authorities operate online portal systems where such documents can be viewed and suggested this should be standard practice across all local authority areas.
 - Alcohol Focus Scotland highlighted from their work with communities, that in practice, some struggle to access the documentation to enable them to properly consider the licence application and others greatly struggle to access documents online. They believe proactively providing copies of the licence applications to statutory consultees would be best practice. As such, suggested that this regulation should be amended so that boards are required to both send the relevant documentation and signpost to websites where the information is available.
 - A response from a community council suggested that Licensing Boards should be required to provide a full set of documents for all licensing applications to community councils, not just the chief constable. (Notification of application: Section 21(2) of the Licensing Scotland Act 2005). They highlighted a number of issues involved in viewing the documents at the council offices.
34. In addition to the above, the following comment in relation to regulation 9 was submitted by West Lothian Licensing Board while answering Question 2.

- Regulation 9 is out of date as the law was changed in 2010 in this respect. Boards no longer have to provide neighbours with copies of applications. This change was very much welcomed. Neighbours are now advised by notification that they can request a copy of the application. In practice very few neighbours ever ask for a copy, surprisingly this includes those who go on to submit objections.

35. Regulation 18 - Occasional licences

Six respondents made comments specifically about occasional licences which included -

- One community council felt that the current situation where there is no other notification required for occasional applications, other than to publish on the council's website for 7 days, seemed to be unfair on

neighbours and that treating a one-off one day event in the same way as the whole Christmas or festival period did not seem appropriate.

- One individual respondent believed that occasional licences should be subject to a greater degree of scrutiny and must be subject to appropriate notification and consultation periods.
 - The Law Society of Scotland commented that the impact on occasional licenses could be very significant if procedures were changed as these can relate to local events or festivals.
 - The City of Edinburgh Licensing Board pointed out that the requirement for details of applications to be placed on the Board's website for a period of 7 days do not take account of the shortened period for notification introduced by the Criminal Justice and Licensing (Scotland) Act 2010 to allow urgent applications to be dealt with, where the period of notification can be reduced to not less than 24 hours. The Board suggested that paragraph 18 should be amended to reflect the current statutory position. i.e. that applications can be accepted in respect of section 57(4) and 57(5) of the Licensing (Scotland) Act 2005. (This was also included in West Lothian's response to question 2).
36. In addition to the above, the following comments in relation to occasional licences were provided by individual respondents while answering Question 2.
- An individual respondent stated "Occasional licences applications do not give a local resident a reasonable chance to object as there is no neighbour notification, and no notice is displayed. Again the reliance is on persons staking out the councils website just in case something might change. I feel this is unfair on neighbours who should have a proper chance to raise their concerns as to what is happening in their community"
 - Another individual respondent stated "Occasional licences should be for rare, one of a kind events - such as community events or fundraising events. They should be actively encouraged for these type of events and at a low cost for the application. Occasional licences should not be abused by business and venues that either should have, or do have, a premises licence - for example a hotel that has a premises licence should be required to obtain a variation to licence to hold 20 weddings per year in a marquee on its grounds, rather than obtain 20 separate occasional licences that are not subject to the same level of scrutiny".

Question 2 Responses

37. The second question was:

Should any of the provisions in the current Licensing (Procedure) (Scotland) Regulations 2007, other than those specifically relating to neighbour notifications, be updated?

- Yes
- No

38. The respondents were firstly asked to answer “Yes” or “No” to question 1. Thirty one of whom replied “Yes” and sixteen said “No”. Three of the respondents did not respond to this question.
39. They were thereafter asked to explain their answer giving consideration to the following:
- Are the other provisions fit for purpose?
 - In what way should any of the other provisions be amended?
 - What would be the likely impact for local communities, the trade and the public?
40. There were forty one responses to this part of the question.

Some respondents to this particular question felt that there was no need to update any of the other provisions. These included individuals, a community council Licensing Boards and the Scottish Beer and Pub Association who made comments such as -

- at present, fit for purpose.
- ok as are.
- I see no need for amending the other provisions”; “We see no need to change.
- the other provisions are fit for purpose and work well.
- the Aberdeenshire Licensing Boards consider the current provisions to be fit for purpose and have not experienced any significant difficulty in putting them into practice.
- We do not believe that there is any evidence to support amendments to the current provisions.

Other respondents, which included individuals, a community council, a Licensing Board and a council felt that there was a need to change other provisions and provided general comments, such as:

- actively involving the community councils.

- a need for a standardised method of delivering the neighbourhood notification, to ensure those who should be notified are notified. This could be done by recorded or registered delivery.
 - no-one should be able to hold an event selling alcohol or to acquire an occasional licence unless they have someone with a personal licence to supervise the event.
 - there should be clearer license definition and specific conditions to that license type.
 - need more community and grassroots input.
 - I feel that the whole system needs updating and in particular the legal wordings in your procedures which are not very user friendly.
 - the creation of an "opt-in" list for inclusion of all persons who have expressed an interest in being notified of new grants of premises licences within the area would increase public awareness and increase engagement.
 - the cost involved in posting such notifications are a major negative with the current procedures.
 - internal Council departments should be specifically consulted and not optionally, such as Environmental Health, Planning, Housing, Building Control.
 - all notices should provide a link to the premises application, layout plan and operating plan. This additional information should be a requirement on the local authority as it is very difficult to object if this information is withheld.
41. In addition, The Scottish Consultants and Specialists in Public Health Alcohol Special Interest Group made a number of general comments regarding different issues, when answering question 2, stating -
- “Some licensing boards notify community councils, but many areas do not have active community councils, so if a neighbour is unable to represent themselves they have no one else to turn to.
- Despite the legislation relating to the establishment of licensing fora, not all areas have a licensing forum and there are instances where the licensing forum is dominated by licensees, licensing agents and where the voice of the community is not heard. Also, the licensing forum is unable to ask for information on specific applications, but only on the general approach taken by the licensing board.
- All of the above means that if an individual is not able to represent themselves to the licensing board there are no other easily accessible means of doing so.
- Ideally, a range of local community organisations should be encouraged to respond and supported in doing so. Examples of possible responders include addiction recovery groups, older people's clubs, sports clubs, youth clubs and mother and toddler groups”.

42. Some of the other respondents were more specific and outlined particular regulations which they felt there were issues with or required to be changed, such as:

43. Regulation 10: Objections and Representations

- Alcohol Focus Scotland suggested that this regulation should be amended to require that boards make a pro forma available to anyone wishing to object or make a representation, stating “Specifically, the content and structure of the pro forma should be such that people are directed to set out their objection/representation, line of reasoning, and any accompanying evidence, with specific reference to the grounds for refusal, particularly the licensing objectives. Although use of the pro forma would be optional, it could go far to help members of the public ensure compliance with any legal requirements, avoid potential wastage of time and resources, and ultimately ensure the objectives are afforded proper consideration in any proceedings. We are aware that some boards make such a form available currently, though this is not universal practice”.

44. Regulation 11: Notifications of documents by Board

- Two Licensing Boards pointed out that regulation 11(3) is out of date as section 21(3)(b) of the Licensing (Scotland) Act 2005 has been repealed. It was suggested this regulation should be adjusted or removed.

45. Regulation 12: Timetable for hearings under sections 23(2) and 30(3)

- Renfrewshire Licensing Board highlighted that the 119 day time limit, will require to be removed or suitably updated to reflect the new statutory time limits to be introduced under section 134ZA of the 2005 Act. (Not yet in force).

46. Regulation 13: Timetable for other hearings

- Renfrewshire Licensing Board highlighted that this regulation will also have to be updated to reflect the new statutory time limits to be introduced under section 134ZA of the 2005 Act. (Not yet in force).
- West Lothian Licensing Board highlighted a concern over the requirement to hold a hearing under section 38(1) no later than 42 days after making a proposal, or receiving an application, for a premises licence review, stating “The Licensing (Procedure)(Scotland) Regulations 2007 do not set out any timeframes for notifications nor a timeframe for the Licensing Standards Officer to produce a report. The Board has in the past found that when a review hearing calls before the Board it is invariably adjourned to another date in order for the premises licence holder, or their agent, to investigate the position and be in a position to answer the allegations in the review application .

It is suggested that the period of 42 days be extended to 60 days which would be in line with the cycle of Board meetings being held on a monthly basis. This would allow time for disputed facts to be considered by all parties and ensure the Board has all information before it when holding such a hearing”.

47. Regulation 14: Representation at hearings

This regulation enables a party to be represented by another person at a hearing held by a board, though the board can decide not to hear such representations if the person is unable to produce written authority to that effect.

- Alcohol Focus Scotland have suggested it would be helpful to amend this regulation stating “Awareness of this requirement is particularly important for community representatives, who may be required to demonstrate they have authority to speak on behalf of a community council, for example, or who may ask someone else to attend on their behalf if unable to attend a meeting. While AFS has tried to raise awareness of this through our community licensing toolkit it would be helpful for the regulations to be amended to require licensing boards to proactively make applicants and objectors aware of this requirement”.

48. Regulation 15: Statement of reasons

- Alcohol Focus Scotland intimated that people making representations or objecting often do not realise that they can require the board to give a statement of reasons for the grant or refusal of the relevant application, stating “In addition, where statements of reasons are provided, they can often be written in complex and overly legalistic language, which can be extremely difficult for people without technical expertise (and even for some people with this expertise) to understand.
- Renfrewshire Licensing Board suggested “The Scottish Government may wish to take the opportunity to prescribe a period for the issue of a statement of reasons in Regulation 15, in relation to section 39A of the Act. Consideration should be given to either increasing the time that a Board has to issue a statement of reasons from the current specification of 14 days to either; 21 days or amending the existing provision to 14 working days”. (section 39A is partially in force)
- West Lothian Licensing Board also commented on the current timescale for issuing of a statement and offered an alternative suggestion, stating “The Board observes that the 14 day timescale for the issuing of a statement of reasons is difficult to meet given the volume and demands of other business. The work involved in preparing these statements is carried out by the Clerk to the Board and their workload covers all licensing matters including licences under the

Civic (Government) Scotland Act 1982 and other miscellaneous licensing regimes".

The Board would invite consideration being given to extending this timescale to 15 working days. It is considered that this will promote more effective and better quality statements that will help Sheriffs deal with appeals under the 2005 Act expeditiously".

49. Regulation 16: Notice of determinations under Part 3

- Renfrewshire Licensing Board suggested "the Scottish Government may wish to provide a period of time for notice of determinations under section 39A, within the terms of Regulation 16". (section 39A is partially in force).

50. Regulation 17: Reasons under section 12(1)(b)

- Alcohol Focus Scotland stated "The current provisions regarding reasons under section 12(1)(b), by only setting a timescale, do not appear to reflect the vital role of forums or the level of regard that boards are expected to give to any advice or recommendations made by them.
- Scottish Health Action on Alcohol Problems (SHAAP) stated that this "Should be strengthened".

Question 3 Responses

51. The third question was:

Do you have any additional concerns regarding the Licensing (Procedure) (Scotland) Regulations 2007? If yes, please provide details below.

Yes

No

52. The respondents were firstly asked to answer "Yes" or "No" to question 3. Eighteen of whom replied "Yes" and twenty eight said "No". Four of the respondents to the consultation did not respond to this question.

53. Twenty two of those who responded provided further details, which included concerns being expressed regarding the complexity of the regulations and legislation and the formal nature of the licensing processes and procedures, which some thought makes it difficult for members of the public to know how to raise their concerns, and others described as being adversarial in nature. Concerns were also raised regarding the way licensing boards operate, with some respondents making reference to them being intimidating.

Some respondents suggested that the regulations must be open and answerable and that the process and regulations should be more

accessible and simplified . For example, one respondent stated “If updating the regulations to increase community participation in the licensing process, then the process of submitting an objection and attending a Licensing Board meeting should also be simplified”.

specific comments from individuals and organisations included –

- Scottish Health Action on Alcohol Problems (SHAAP) stated “The Procedure Regulations can be amended to improve community engagement, but this should not in any way negate or diminish the need to improve the licensing system overall, to ensure that the rights of communities are better promoted and respected”.
- The complex, long drawn out procedure to apply for a licence has been disadvantageous for local fund-raising events, community gatherings and enterprises.
- For many people attending a Licensing board meeting to speak to their objection can be a daunting prospect
- Charities - considering that the regulations should not apply to them in any way.
- There should be clearer license definition and specific conditions to that license type.
- Anonymity should be a part of the process of making an objection or the licensing board are not receiving a true picture of what is going on in communities.
- There doesn't seem to be communication between other local authority departments that could have a useful right of consultative response to a license and the comments raised by an affected resident objecting to the application. Such as noise and crowd control for a public events license that is primarily concerned with misuse and mis-selling of alcohol.
- The Scottish Consultants and Specialists in Public Health Alcohol Special Interest Group stated “The timing of the licensing board can be difficult if it operates during the day and the person submitting an objection is unable to attend due to employment issues”.
- Site Visits: Regulations relating to site visits in the determination of license applications should be included to ensure all local boards follow a set procedure
- The regulations should specify a robust procedure for ensuring planning and building regulations have been met before the granting of any licence, including occasional licences. Increased penalties for not submitting this information, or indeed submitting misleading information, should be imposed.
- There is no provision in the regulations for how vexatious representations should be dealt with by local boards. This requires to be addressed to ensure all local bodies deal with vexatious representations in the same manner.
- having a dedicated member of the licensing board as an advocate for members of the public who have provided representations (whether they be objectors or supporters) would be beneficial in improving the

fairness of the licensing process. Such a role would also be a means to filter out any vexatious or unsubstantiated claims.

- licensing decisions are often made with an unreasonable burden on local residents to 'complain if there is a problem' and a burden on local authorities and Police Scotland to then investigate and deal with arising concerns
- Alcohol Focus Scotland stated "Removing barriers to public participation will therefore require consideration of all elements impacting on 'access' to the system. These include:
 - Accessibility: what informational, practical and structural barriers exist to prevent communities from engaging with the licensing system?
 - Acceptability: do the means by which hearings operate preclude public participation in practice?
 - Accommodation: are the accommodation and other facilities suitable to meet the needs of all users?"

They also suggested that consideration should be given to how the regulations could be amended to address some of these concerns, stating "While the recommendations we have outlined in question 2 may lead some improvements, other measures would also be required. For example, we believe the regulations should be amended to detail means by which licensing boards' processes and procedures should provide for increased accessibility, transparency and accountability for communities, for example by requiring:

- a set of published standing orders;
- board papers and minutes being published on time;
- board minutes recording the names of board members voting for/against a decision; and
- details to be made available of what people can expect when attending meetings and the supports available to them.
- A community council suggested that an additional provision is required, whereby each member of the Licensing Board is required in turn to justify his/her decision, at the hearing, in reference to each of the five Licensing Objectives. This requirement will help each Licensing Board member focus on the Licensing Objectives. They also suggested that the following requirement should be introduced: " There will be an audio-recording of the proceedings of each Board Meeting which will be held in records by the Clerk to the Board for a period of 2 years, or longer if the minutes of the meeting are challenged, until such time as the challenge is resolved." stating "This will help secure the Licensing Board's compliance with its requirements in terms of meeting the Licensing Objectives, by allowing full scrutiny of decisions made, and may avoid costly legal proceedings associated with contesting a decision".

- One community Council believe that the appeal procedure for local groups should be revamped so that the procedure is less costly and they can have access to legal representation
 - Another Community Council stated that “Notification is poor. The public should be able to sign up for alerts for any application in their area. Objections should be possible on line. A procedure for noise complaints should be set out in the legislation at national level”
 - The Scottish Community Safety Network said “ We welcome a plain English guidance document for communities and citizens on how the process works, their rights within the process and what they can expect from the process. In particular an easy to understand flow diagram (or similar) showing each step and timescale within the process would be welcome”
- .

Question 4 Responses

54. The fourth question was:

Are you aware of any examples of good practice relative to the Licensing (Procedure) (Scotland) Regulations 2007? If so, please provide details below.

- Yes
 No

55. Fifteen of the respondents replied “Yes” and twenty nine said “No”. Six of the respondents did not respond to this question.

56. This question allowed respondents an opportunity to provide examples of good practice for the Scottish Government to consider. Twenty two of those who responded made comments or provided further details/examples, which included –

- Some Licensing Boards are using the “Tell Me Scotland” website to publicise liquor applications although the standard notice format available at present is limited. The advantage of the Tell Me Scotland website for the public is that they can register an interest in a particular geographical area and receive alerts by text message or email to any notices affecting that area.
- A local business in East Ayrshire actively sought the views of its customers, the public and local community, on whether it should apply to the board for an alcohol license. It achieved this, quite successfully, by posting on its Facebook page. People then commented underneath giving their views.
- a prospective alcohol license applicant asked their potential future customer base to complete a questionnaire via survey monkey which asked about their opinion about the current activity/ leisure activity on

offer in the area of their proposed new premises. i.e. actively seeking the views and opinions of people before going forward with any licensing applications to the relevant board authority.

- Some local authorities have taken steps to train community groups in how the Licensing Boards work. This has proved beneficial for those who attend.
- South Lanarkshire Licensing Board has introduced an "opt-in" list to enable the Board to notify persons on that list of any applications for new grants and/or major variations of premises licences in their area. Applications are still advertised on the Council website in the usual manner.
- some licensing board areas currently provide a pro-forma for objectors to assist them in relating their objections to the grounds for refusal. In addition, some boards also provide information on how to object to or make a representations on a licence application.
- Objections/representations have been received by East Ayrshire Licensing Board in respect of applications therefore the procedure appears to work. Extending neighbour notifications to 10m would allow for further community involvement.
- City of Edinburgh uses 10 metres as the radius to define "neighbouring land" - still not wide enough but better than specified in provision 4(a).
- No effective review of licences when there has been cases of disturbance and illicit activities taking place on licensed premises.
- Licensing Standards Officers (LSOs) in Aberdeenshire visit sites to ensure that site notices are displayed.
- Aberdeenshire Licensing Boards endeavour to give the earliest possible notice of objections and representations to applicants. This means that it is often possible for LSOs to mediate between parties and arrive at mutually acceptable solutions which can mean that all contentious matters are resolved prior to applications coming before the Boards.
- Occasional licences are monitored as to how an event is going to be run. i.e. if a door person is to be on duty.
- The Law Society of Scotland stated “Licensing boards are very experienced in dealing with public interaction, whether they are supportive or otherwise. There are good practice examples across the country where licensing boards will ensure that people seeking to make a representation can do so sensibly. Many of these boards will issue guidance notes about how a licensing hearing is conducted, such as

the order of who will be asked to speak and what material may be irrelevant. At hearings there are numerous examples of board members ensuring that people who have lodged representations are given time to make their point in surroundings which may be intimidating or unnatural for many. These good practices have developed over many years of administration of the licensing system. We are not aware of any suggestion that this has fallen into disrepute”.

- UK Hospitality stated “The licensed trade has a range of good practice related to general licensing which has been developed over the years relating to underage sales, unit awareness etc. and continues to be involved with numerous best practice schemes such as pubwatches, Best Bar None, and Business Improvement Districts across Scotland. As highlighted above, we are of the view that well-developed guidance and proven partnership working between all parties involved in licensing, is the most effective way of safeguarding the licensing objectives and maintaining a vibrant hospitality sector in Scotland”.

Scottish Government’s Next Steps

57. The responses will be considered alongside other available information and evidence to help inform our consideration on the update of the Licensing (Procedure) (Scotland) Regulations 2007.



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