

**SPECIAL ANGUS LICENSING BOARD – 10 JUNE 2019**  
**RESPONSE TO SCOTTISH GOVERNMENT CONSULTATION**  
**DRAFT REVISED GUIDANCE– LICENSING (SCOTLAND) ACT 2005**  
**REPORT BY THE CLERK**

**ABSTRACT**

The purpose of this report is for the Board to consider, and then agree, the terms of a response to the Scottish Government's consultation on its draft guidance for the Licensing (Scotland) Act 2005 ("the Act").

**1. RECOMMENDATION**

- (i) to submit a response to the consultation, and
- (ii) agree the terms of the proposed draft response as detailed in **Appendix 1** to this report, subject to any amendments considered necessary by the Board.

**2. BACKGROUND**

In accordance with section 142 of the Act the Board must have regard to the terms of the Act's guidance while carrying out their statutory functions.

The Scottish Government is consulting on the terms of a new draft of the current guidance. The link to the draft guidance and consultation paper can be found here:-

<https://www.gov.scot/publications/consultation-licensing-scotland-act-2005-section-142-draft-revised-guidance-licensing-boards/>

The consultation period opened on 19 March and closes on 11 June 2019.

The consultation seeks views on the terms of the new draft guidance which has been updated with regard to legislative changes since the original guidance was issued in 2007. The Board will note that further legislation which has impacted on the licensing regime in Scotland, since the introduction of the Act, includes:-

- Alcohol etc. (Scotland) Act 2010
- Criminal Justice and Licensing (Scotland) Act 2010
- Alcohol (Minimum Pricing) (Scotland) Act 2012
- Air Weapons and Licensing (Scotland) Act 2015

In relation to the new draft guidance, particular attention is drawn to the following sections that have received an update which is likely to benefit the Board:

- Statements of Licensing Policy (Chapter 4)
- The Overprovision Assessment (Chapter 5)
- Premises Licence (Chapter 8)
- Occasional Licence (Chapter 9)

As noted above, there have been changes to the legislation since the last guidance was issued and it is suggested that the proposed draft guidance has taken these changes into account. The Board will note that the consultation has not focussed on specific questions but rather, invites comments on areas of the guidance which are unclear and invites comments to be taken into account within the guidance

A draft response has been prepared on behalf of the Board and is attached for consideration by the Board.

Subject to comments that the Board may wish to make about the terms of the new draft guidance, or any areas which the Board considers are not sufficiently covered, it is suggested that the attached response is submitted in support of its terms while suggesting further guidance be provided in respect of the conduct of hearings.

**3. FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

**4. CONCLUSION**

The Board is asked to note the terms of the consultation and agree to the terms of the response.

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**APPENDIX 1 TO REPORT LB 36/19  
SPECIAL ANGUS LICENSING BOARD – 10 JUNE 2019**

**DRAFT CONSULTATION RESPONSE**

1. The updated guidance is welcome given the changes to the legislation since the guidance was initially brought in. On the whole, the guidance is detailed and provides support to Boards as they carry out their functions.

It is not considered that there were any areas within the draft guidance that were unclear or especially difficult to follow for professionals dealing with licensing procedures under the Licensing (Scotland) Act 2005.

Some of the more technical references or details of procedures may be less straightforward to follow for a lay person however, it is not felt that this is any different from general issues with legal language, and, the draft keeps jargon to a minimum.

The guidance is intended for Licensing Boards who have access to a clerk so there are unlikely to be difficulties in this respect. It is felt that the language used within the guidance is appropriately balanced and provides clarity for Boards using it.

It is considered that having the guidance in one place is helpful and that it is relatively easy to navigate given its length. A contents page with hyperlinks, like the previous guidance, would be a useful addition in terms of assisting with navigation.

We note that there is additional guidance on overprovision and how to manage this. This additional guidance is welcomed and is, on the whole, clear and helpful.

The guidance in respect of the “duty to trade”/keep to operating plan hours has previously been raised as a concern with the old guidance by various interested parties. The updated and extended guidance is clearer about the Board taking a common sense approach to this and the guidance is also clearer about when a formal variation ought to be considered. It is felt that this will be beneficial to Boards using the guidance.

The additional guidance in relation to the licensing objectives is clearer than the previous guidance and details of the specific objectives is welcomed. Specifically, this appears to give clearer guidance in relation to how these are promoted.

2. At para 10.33 there is a general and brief comment on hearings and the manner in which these ought to be conducted. It may be useful to have some additional guidance in relation to this point, without becoming too prescriptive, as this may promote some kind of consistency in relation to the practicalities of arranging hearings and as to how these are conducted.

It is suggested that this could include some guidance in relation to conducting hearings in public/private, how to guide those who attend through the hearing process and how to give fair notice in respect of hearings. Some further procedural guidance of this nature may promote fairness and some overall consistency across Boards.

Overall, the guidance is clear and provides assistance when dealing with the licensing procedures.