



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

10th Meeting, 2019 (Session 5)

Wednesday 27 March 2019

The Committee will meet at 9.30 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Alcohol licensing in Scotland:** The Committee will take evidence from—

Ash Denham, Minister for Community Safety, and Peter Reid, Team Leader - Licensing, Criminal Law, Practice and Licensing Unit, Scottish Government.
3. **Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).
4. **Alcohol licensing in Scotland:** The Committee will consider the evidence heard earlier in the meeting.

Peter McGrath
Clerk to the Local Government and Communities Committee
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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk

LGC/S5/19/10/1

PRIVATE PAPER

LGC/S5/19/10/2
(P)

Local Government and Communities Committee

10th Meeting 2019 (Session 5), Wednesday 27 March 2019

Community Participation in the Alcohol Licensing System: Note by the Clerk

Introduction

1. This is a postponed evidence session from 2018. On 23 May 2018 the Committee held a [round table evidence session](#) on Alcohol Licensing in Scotland in order to explore the ability of communities to engage with and influence alcohol licensing decisions in their areas.
2. Following this session, the Committee agreed to invite the Cabinet Secretary for Justice, who at the time held portfolio responsibility for licensing in the Scottish Government, to give evidence on issues raised during the roundtable. The session was to take place on 27 June 2018, but a ministerial reshuffle just before the meeting led to the session being postponed. Portfolio responsibility for alcohol licensing remains within the Justice Department but now rests with the Minister for Community Safety.

Background

3. The key legislation that controls the sale of alcohol in Scotland is the Licensing (Scotland) Act 2005. Subsequent Acts that have also had an impact on the sale of alcohol are the Alcohol etc. (Scotland) Act 2010, the Criminal Justice and Licensing (Scotland) Act 2010, and the Air Weapons and Licensing (Scotland) Act 2015.
4. In a [letter to the Committee in November 2017](#), the Cabinet Secretary for Justice indicated that the Scottish Government was working on updating the statutory guidance for alcohol licensing. In November 2018, the Scottish Government published a revised strategy: the [Alcohol Framework 2018: Preventing Harm](#). As with the previous strategy, this strategy adopts a “whole population approach”. In other words, it looks at improving health outcomes across the whole population rather than focussing only on problem drinkers. Reducing the general availability of alcohol is argued to be an important part of this. Other key themes are:
 - protecting young people;
 - tackling health inequalities;
 - improving national systems.

Licensing Boards

5. Decisions on the provision of alcohol licences are the responsibility of Licensing Boards in each local authority area. These are quasi-judicial bodies consisting of locally elected councillors, with support from local authority staff, including a qualified solicitor who provides legal advice. Licensing Boards are entirely separate legal entities from local authorities.

6. Licensing Boards must now produce annual income and expenditure reports. The first reports by Licensing Boards were published in late 2017. Licensing Boards are now also required to produce a report on their functions, which must be published by three months after the end of the financial year.

Local Licensing Forums

7. Under the 2005 Act, Local Authorities were required to establish Local Licensing Forums (LLFs). The role of LLFs is to review the operation of the licensing system in their area and to give general advice to the Licensing Board. They cannot comment on individual applications.
8. Membership of LLFs includes the Licensing Standards Officer for the area and a representative of the local health board, as well as others in the community with an interest in licensing matters.

Themes from the roundtable Session and relevant written evidence

9. Some participants at the round table evidence session on 23 May 2018 also provided written evidence. In addition, the Committee sought written views from Licensing Boards and Licensing Forums from across Scotland. All this written evidence can be found [here](#). The Official Report of the evidence session is [here](#). In advance of this postponed evidence session, a submission was received in January 2019 from Alcohol Focus Scotland (see annexe to this paper).
10. At the round table session, the Committee heard a range of views around community participation in the licensing system. These included views on:
 - the role and effectiveness of local licensing forums;
 - how the framework for controlling overprovision of licensed premises worked in practice;
 - tensions between the legal constraints on licensing boards and how communities interacted with them; and
 - the work of Licensing Standards Officers.

27 March meeting and next steps

11. The Committee will explore these and other issues with the Minister, and will consider the evidence heard, and any next steps, at the end of the meeting.

Written Submission from Alcohol Focus Scotland

Dear Convener,

I am writing to you further to the Local Government and Communities Committee's round table evidence session on alcohol licensing, on 23 May 2018, in which my colleague, Laura Mahon, participated. The session considered how communities can engage with and influence alcohol licensing decisions in their local areas and focused particularly on levels of transparency, accountability and public participation in the licensing system. Alcohol Focus Scotland (AFS) also provided additional written briefing to the Committee in June 2018.

I understand from the Committee's Work Programme, that alcohol licensing will be the subject of a further evidence session on 27th March and I thought it might be helpful to provide the Committee with an update in advance of this.

Update of Statutory Guidance

At the time of the May 2018 evidence session, a process to update the statutory guidance accompanying the Licensing (Scotland) Act 2005 was underway. From the outset of that process, AFS expressed concern about the apparent lack of consultation with licensing boards and other stakeholders on the guidance and where it needed to be improved. AFS has a keen interest in ensuring that the public interest purpose of licensing is emphasised and appropriately supported, and in our experience confusion over the guidance is frequently cited by community members and local licensing forums as being a barrier to participation. The timescales set for the update, the sheer complexity of the subject matter, and a lack of clarity around the process simply did not afford AFS and others the opportunity to fully contribute. Ultimately, this resulted in the production and dissemination of a draft guidance document limited to Licensing Policy Statements and Overprovision. This document has no statutory authority and in AFS's view is not fit for purpose. The poor drafting risks exacerbating the existing confusion and ambiguity that the update was intended to address, particularly in relation to the crucial section on overprovision.

As part of the Alcohol Prevention Framework, published in November 2018, Scottish Government has now committed to a public consultation on the statutory guidance. AFS welcomes this commitment and hopes that the contribution of key stakeholders, including communities, will help to ensure that the final product is robust. In order to ensure that stakeholders have the opportunity to make a meaningful input we have recommended that the consultation be structured around a written paper inviting answers to specific questions as well as inviting more general views about the material. The consultation should be subject to the Scottish Government's standard 12 week consultation period.

Annual Functions Reports

A further issue that AFS brought to the attention of the Committee in 2018 related to the requirement on licensing boards to publish annual functions reports. We

expressed concerns about the lack of engagement on the form and content of the functions report with those who might use them and the lack of direction provided to local licensing boards.

The Air Weapons and Licensing (Scotland) Act 2015 introduced a new annual reporting duty on licensing boards to help improve transparency. When the legislation to introduce the reports was being drafted, the Cabinet Secretary highlighted that in order to ensure that the reports remain as effective and useful as possible, ministers have the power to make further provision about the annual reports using secondary legislation. He noted that he expected to consult on the most effective and proportionate format and content of the reports before laying secondary legislation. However, no formal consultation has been undertaken and no secondary legislation brought forward. As such, licensing boards have been provided with little practical guidance to assist them with the preparation of these reports.

The first annual function reports were required to be published by 30 June 2018. AFS has now reviewed the reports to assess the extent to which they met statutory requirements and how far they fulfilled their intended purpose of increasing transparency and supporting the public to see how boards go about their business. While we found many examples of good practice, a number of the reports contained only minimal information and are unlikely to enable communities/stakeholders to assess and understand the operation of the licensing system in their local area. Furthermore, it was evident that several of the reports had not been written with the public in mind as they contained highly legalistic and bureaucratic language. AFS is hopeful that the reports will improve over time as boards refine their approach and content. However, the wide variation between the reports indicates that licensing boards require further guidance from Scottish Government regarding their form and content.

It will also be essential that the reports are made widely available for public scrutiny. They will be of particular relevance to local licensing forums, which represent community interests on licensing matters and have a role in reviewing the operation of the licensing system. The publication of good quality reports is likely to assist forums to provide informed comment and advice to licensing boards on current and future licensing strategy. However, the reports will also be relevant to a broad range of other stakeholders such as Community Councils, health boards, police, and Alcohol and Drug Partnerships amongst others.

AFS expects to publish a report within the next few weeks to present the key findings of our review of the annual functions reports, along with examples of good practice and recommendations. We hope that it will be useful to boards, to those who support them, and also to those with a role in reviewing and scrutinising the licensing system. We would be happy to provide the Committee with a copy of this report as soon as it has been finalised.

I hope that the above information is useful to the Committee ahead of the upcoming evidence session on alcohol licensing. AFS would be pleased to provide any further information which the Committee would find helpful.

Alison Douglas, Chief Executive