



Law Society
of Scotland

Consultation Response

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

5 June 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Licensing Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Update of The Licensing (Procedure) (Scotland) Regulations (Procedure Regulations)¹. The sub-committee has the following comments to put forward for consideration.

General Comments

The Procedure Regulations have not been updated since they were introduced in 2008. The Scottish Government committed² to carrying out a consultation in the future on the Procedure Regulations '*to properly evaluate the costs and benefits of any change to the neighbour notification requirements*' to allow the Procedure Regulations to best reflect modern needs and practices.

The concerns to be examined originate from two sources. Submissions made at Stage 2 of the Alcohol (Licensing, Public Health and Criminal Justice) Bill (now the Air Weapons and Licensing (Scotland) Act 2015) during its parliamentary consideration, sought more community engagement in the licensing process. Specific comments were made in relation to:

- Extension of neighbour notification to expand from 4m to 50m where there is no active Community Council

¹ <http://www.legislation.gov.uk/ssi/2007/453/contents/made>

² http://www.parliament.scot/S4_HealthandSportCommittee/Inquiries/20151102_Scottish-Government_Memorandum.pdf

- Double the time period from 21 to 42 days for the Board to provide notification of the applications for new premises licences and major variations and the applicant to provide site notification of the application

The consultation also identifies that in the NHS Scotland's Report on Monitoring and Evaluating Scotland's Alcohol Strategy,³ they suggested that, in their view, there was limited involvement and therefore scrutiny from the public in the licensing system. Alcohol Focus Scotland⁴ (AFS) also identified a perceived need to improve public notification of licensing applications. We note that there is no specific reference made to the evidence from the NHS Scotland Report, the AFS seminars and in paragraph 13 of the consultation where it states '*further recent engagement with stakeholders has identified.*'

We understand that the perception is that fewer licences would be granted if the neighbour notification requirement was increased and the public had more time to object. We would stress that representations can be positive as well as negative. It is important to maintain a balance and remember that discussion of public engagement in the licensing process must not be viewed through the prism of opposition to new licences alone.

Question 1: Should the provisions in the current Licensing (Procedure) (Scotland) Regulations 2007 specifically relating to neighbour notification be updated?

A review of regulations which have been in place for some time is always to be encouraged. However in considering whether changes should be made, two questions arise. Firstly, if there is a need for change and secondly, what areas would be covered by any changes.

We are not convinced of any fundamental need to amend the neighbour notification as set out in the Procedure Regulations. As we referred to the section on General Comments, it would have been helpful to be made specifically aware of evidence obtained from the public supporting changes. Such evidence would strengthen the concerns mentioned at Stage 2 of the 2015 Bill and would allow us to be able to assess the strength of demands for change, rather than what appear to be anecdotal calls for change.

Our committee members (including solicitors working for local authorities and representing private clients), and who are at the front line of licensing decisions and are unaware of a body of evidence supporting any need for change or any identified problems with the operation of the current system. There are many examples of large numbers of objections received for particular applications which would tend to indicate that there appear to be no problems in accessing the relevant information required to make objections. These views are shared widely across the members of the sub-committee. It is important to maintain a balance between the interests of the community and the applicants with regard to the five licensing objectives, and to recognise that those interests do not necessarily conflict. This seems to be working well.

³ We assume that the reference is to the Monitoring and Evaluating and Evaluating Scotland's Alcohol Strategy Final Annual Report http://www.healthscotland.scot/media/1100/mesas-final-annual-report_5780_mar-2016.pdf

⁴ The findings from these regional seminars seem not to have been published.

We would therefore be concerned that changes are being proposed in relation to a system that is currently working well.

The consultation does not indicate exactly what changes would be under contemplation, other than a general reference to neighbour notification and the time period being extended.

Regulation 4 of the Procedure Regulations deals with 'neighbouring land'. We would be concerned that any proposed change would increase the burden on the already stretched resources of local authority teams who deal with the administration of the licensing system. Even if the notification is extended to 50m, we understand that it would be difficult for a lay person to access the addresses of the people who may need to be notified. We recall that this was 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 we consider this an unfair burden to impose.

One of the suggestions was that: 'the applicant to provide site notification of the application'. We assume this is a reference to neighbour notifications as opposed to a site notice displayed at the premises, which is of course already a requirement. The suggestion therefore appears to be to switch the administrative burden to write to neighbours from the licensing board to the applicant.

There may be a number of issues with that proposal. Firstly, that information may be hard to obtain, especially for a private individual or business seeking to make a licence application and secondly, it may be even harder now with the commencement of the GDPR provisions. Where the occupier of such land in terms of Regulation 3 of the Procedural Regulations is not registered or such information is not publicly available, this would impose a considerable burden. Our recollection is that the burden was shifted in order to reduce the prospect of claims that notifications had not been sent and/or received, given the difficulty in verifying this when it may come down to one party's word against another. This was needed to ensure the process was conducted independently and transparently.

Regulation 6 of the Procedure Regulations deals with 'publicity to applications'. We would have concerns about any extension of the 42 day period. 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.

Regulation 18 of the Procedure Regulations deals with occasional licenses. The impact on occasion licenses could be very significant if they changed as these can relate to local events or festivals.

Other provisions

Question 2 - Should any of the provisions in the current Licensing Procedure (Scotland) Regulations 2007 other than those relating to neighbour notification be updated?

No

We refer to our answer at Question 1.

Additional concerns

Question 3 - Do you have any additional concerns regarding the Licensing Procedure (Scotland) Regulations 2007? If yes, please provide details below.

We have no further comment to make.

Question 4 - Are you aware of any examples of good practice relative to the Licensing (Procedure) (Scotland) Regulations 2007?

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.



We would be happy to discuss any of our comments further. In particular, we would be interested in obtaining information as to the actual need for changes being made, as highlighted above.

Gillian Mawdsley

Policy Executive

Law Society of Scotland

DD: 01314768206

gillianmawdsley@lawscot.org.uk



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