



REPORT

To: GENERAL PURPOSES COMMITTEE		Subject: NICHOLSON COMMITTEE REPORT ON THE REFORM OF LIQUOR LICENSING IN SCOTLAND – COUNCIL RESPONSE
From: DIRECTOR OF ADMINISTRATION		
Date: 16 December 2003	Ref: WBK/TD	

**1. Introduction**

- 1.1 In June 2001, the Justice Minister announced the appointment of a committee under the chairmanship of Sheriff-Principal Gordon Nicholson, its remit being "To review all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public order; to recommend changes in the public interest; and to report accordingly".
- 1.2 There followed extensive public consultation during which North Lanarkshire Licensing Board made written representation to the Committee and also gave oral evidence.

**2. Report**

- 2.1 The Nicholson Committee Report presents a comprehensive body of liquor licensing law which has attracted widespread approval and support. However, in the course of its work, the Committee took legal advice on the implications of the European Convention on Human Rights particularly on the impact of local authorities holding liquor licences which are granted by a Licensing Board whose membership is made up of councillors. The Committee concluded that with respect to the consideration of an application by a local authority, a Licensing Board was not an independent and impartial tribunal. The Committee recommended (rec.21) that it should not be lawful for a local authority to hold a premises licence in its own name. All local authorities which presently hold liquor licences in respect of premises owned or leased by them should in future make other arrangements. Such arrangements might involve the catering, and in particular the licensed parts of the operation, in such premises being placed in the hands of third parties by virtue of franchise, lease, or other similar arrangements so that in future any premises licence can be applied for, and held, by the relevant franchise holder or tenant rather than the local authority.
- 2.2 I have consulted with all Council Departments on the terms of the Report. Community Services are particularly concerned about the proposal and its adverse impact on the Catering Service. They advise that the proposal would lead to operational inefficiency since Catering Service staff perform both bar and catering duties. The loss of income will also impact on their trading performance. Also, they have experience of poor standards when a franchise operation was piloted at the Tryst Sports Centre.
- 2.3 The deadline for responses to the Scottish Executive was 19<sup>th</sup> December 2003. Following consultation with the Convener of General Purposes Committee the annexed letter was approved and issued as the Council's response.

**3. Recommendation**

3.1 The Committee are asked to homologate the response made.

  
Director of Administration

## Annex to Report on Response to Nicholson Committee

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F.A.O. Tony Rednall

Dear Mr Rednall

### **Review of Liquor Licensing in Scotland**

North Lanarkshire Council would wish to respond to the Nicholson Report independently from North Lanarkshire Licensing Board. On the whole the Council welcomes the recommendations. However, there is one recommendation in particular about which the Council has grave reservations. The Council disagrees with recommendation 21 which would prevent the Council from holding a premises licence in its own name.

The recommendation has emerged from the conclusions of the Committee concerning the position of Licensing Board's in relation to the European Convention of Human Rights. The Council chooses not to seriously disagree with the principal conclusions which the Committee has reached with regard to the applicability of Article 6 of the Convention except to say that if indeed a licensing board is not Article 6 complaint were it to determine applications from its own Council, the recommended mechanism of leasing, franchising or similar does not appear to be placing the Council at a suitable distance from the licensing operation within its premises to enable it to be concluded that it does not still obtain a benefit from the licensed activity.

Apart from this legal difficulty, there will be great practical difficulty in operating a lease or franchise. All Council-owned premises which currently are licensed do not have the sale of alcohol as their main activity and this must be true of all other Councils. Drink is served in bars and restaurants attached to public theatres and concert halls e.g. Motherwell Civic Theatre, Glasgow Royal Concert Hall and also in local community centres and public halls which hold weddings, parties and similar social and leisure activities. Most staff in these premises are not engaged, or are not solely engaged in the sale of alcohol.

In objecting to the proposal, the Council would wish to put forward an alternative which would preserve the integrity of the Council's whole activity within its premises but also satisfy the ECHR difficulty. The solution is to adopt an approach which is similar in concept and intent to the determination of planning applications where a local authority is the developer or has an interest in the land to be developed.

The Council would initially submit an application for a premises licence to the licensing board who would undertake advertising and consultation in the normal way. There are alternative suggestions for the next stage. The application would come before the board who would hear parties, including objectors or those making observations.

It must be said in passing that Council licences have never encountered objections or observations in the past.

The board would not come to a determination but would reach a view on the application including any amendments to the operating plan or further conditions. They would then remit the application to the Sheriff-Principal who would deal with it, probably akin to a summary application. Alternatively, the Board would not have the preliminary hearing but would pass the matter to the Sheriff-Principal simpliciter and address the Sheriff-Principal at the hearing if the former so wish. This Council would favour the approach since it is to be expected that the Sheriff-Principal would wish to be informed of the Board's views, in the interest of consistency of approach, particularly with regard to the Board's published policies.

In conclusion, issues of unsuitable premises, public order, public safety or over provision have never been a feature of council licences. The difficulty here is jurisprudential not practical. It is therefore this Council's view that the remedy should seek to preserve the current style of council operation if at all possible. The remit of an application to the Sheriff-Principal solves both legal and practical difficulties in this Council's opinion.

Yours sincerely

**Director of Administration**