

**EXECUTIVE NOTE TO**  
**THE LICENSING (MANDATORY CONDITIONS NO.2) (SCOTLAND)**  
**REGULATIONS 2007**  
**(S.S.I. 2007/546)**

The above instrument was made in exercise of the powers conferred by sections 27(2), (8) and (9) and 146(2) of the Licensing (Scotland) Act 2005. Section 27 will be brought fully into force by the commencement date of these Regulations. These Regulations are subject to the affirmative resolution procedure.

### **Policy Objectives**

The Government's policy is that displays of alcohol for consumption off the premises should in general be confined to a single area of premises. Many stores have an obvious "wines, beers and spirits" section, aisle, or shelves. These are sometimes in one corner of the premises, with décor and floor coverings that distinguish the area from the rest of the store. Other premises will have one area of shelving given over exclusively to the display of alcohol. However, it is now common for alcohol to be displayed at various other points around a store. Larger stores can accommodate a number of separate alcohol displays including displays directly inside a shop doorway, at checkouts, or on numerous "end of aisle" displays. "Cross merchandising" or "food-matching" also enables alcohol to be displayed alongside other items to encourage purchasing – for example, wine located in a cheese section or beer located beside barbeques and garden furniture.

The Government is concerned that these omnipresent alcohol displays encourage us to think of alcohol as an ordinary commodity. The policy intention behind these Regulations is that by requiring all alcohol to be displayed together, in a particular part of a store, the customer will need to make a conscious decision to go to that area if they intend to browse or select an alcohol product. They would no longer encounter numerous alcohol displays as they select their everyday groceries which may help to emphasise that alcohol is not an ordinary commodity, should not be seen as such, and should not be sold as such.

With regard to regulation 2, this will require all licensees to maintain a record of training undertaken by all staff working on the premises. The training record of a staff member must be kept on the premises whilst that person is working and is to be available for inspection by Licensing Standards Officers. The condition supplements the provisions set out in the Licensing (Training of Staff) (Scotland) Regulations 2007 (SSI no. 397). These were developed with the assistance of a Training Advisory Group established by Scottish Ministers to advise on the development of proposals on training under the Licensing (Scotland) Act 2005. The group consisted of representatives from the following organisations: -

- Alcohol Focus Scotland;
- Servewise
- British Institute of Inn Keeping
- Scottish Beer and Pub Association
- Scottish Licensed Trade Association
- British Hospitality Association;
- Scottish Retail Consortium;
- Scottish Federation;
- ACPOS; and

- City and Guilds Institute

## **Consultation**

The former Scottish Executive undertook a consultation on proposals for separate alcohol display areas in off sales premises and the condition requiring a training record, as part of the wider consultation undertaken on guidance and regulations prepared under the Licensing (Scotland) Act 2005 between October and December 2006. Those consulted included all local authorities in Scotland, all Licensing Boards, the key licensed trade associations and a range of other stakeholder groups. In addition to this the Scottish Executive had useful discussions with key stakeholders during the consultation period. More recently, further discussion has taken place with retailers and trade bodies, and directly with store operators through seminars organised by the Scottish Grocers' Federation on wider licensing issues.

The organisations consulted included:

- The Scottish Licensed Trade Association;
- British Entertainment & Dance Association;
- The Scottish Beer & Pub Association;
- British Institute of Inn keeping;
- Scottish Grocers' Federation;
- Scottish Retail Consortium;
- Association of Chief Police Officers in Scotland; and
- The British Hospitality Association.

## **Financial Effects**

The instrument has no financial implications for the Scottish Government or other public bodies. There may be minimal costs placed on some retailers with regard to re-arranging and moving alcohol products to one part of their store.

# Regulatory Impact Assessment

## Title of proposal

1. The Licensing (Mandatory Conditions No.2) (Scotland) Regulations 2007.

## Purpose and intended effect

### *(i) Policy Objective*

2. The Scottish Government's policy is that displays of alcohol for consumption off the premises should be confined to a single area of the premises. Many stores have an obvious "wines, beers and spirits" section, aisle, or shelves. These are sometimes in one corner of the premises, with décor and floor coverings that distinguish the area from the rest of the store. Other premises will have one area of shelving given over exclusively to the display of alcohol. However, many premises now display alcohol at various other points around a store. Larger stores can accommodate a number of separate alcohol displays including displays directly inside a shop doorway, at checkouts, or on numerous "end of aisle" displays. "Cross merchandising" or "food-matching" also enables alcohol to be displayed alongside other items to encourage the consumption of alcohol with food, for example, wine located in a cheese section or Indian beer alongside Indian ready meals. Further examples of cross merchandising not connected with food are beer located beside barbeques and garden furniture, and wine located in a ladies clothing department.

3. The Government is concerned that omnipresent alcohol displays in many stores may encourage customers to think of alcohol as an ordinary commodity. The policy intention behind these regulations is that, by requiring all alcohol to be displayed together, in a particular part of a store, the customer will need to make a conscious decision to go to that area if they intend to browse or select an alcohol product. They would no longer encounter numerous alcohol displays as they select their everyday groceries. This may help to emphasise that alcohol is not an ordinary commodity, should not be seen as such, and should not be sold as such.

4. The purpose of the regulations is to provide that the display of alcohol for consumption off the premises is confined to a single display area, and/or an area that is inaccessible to the public. The first area is to be used for the display of alcohol. The only non-alcohol products that may be displayed in this area are non-alcoholic drinks, or products packaged with alcohol (for example, cheese and wine gift packs). There is no restriction on the types of products that may be displayed in the display area that is inaccessible to the public. This recognises that these 'behind the counter' areas are generally used for the display of tobacco or other age-restricted products, or high value products prone to theft.

5. The regulations will come into force on 1 February 2008 (the start of the transition period for the 2005 Act) and the premises licences to which the conditions will be attached will take effect from 1 September 2009. These conditions would therefore apply from 1 September 2009.

### *(ii) Background*

6. The Licensing (Scotland) Act 2005 has amongst its five objectives "protecting and improving public health." Studies have shown that aside from the more obvious problems of alcohol-fuelled anti-social behaviour, alcohol misuse is at a level where serious health problems arise, as a personal cost to individuals and families, a financial cost to the National Health Service and a damaging effect on the economy of Scotland.

7. Addressing over-consumption requires a change in Scotland's drinking culture. Legislative action cannot achieve this alone but it can send an important signal. The Government is clear that alcohol should not be treated as an ordinary commodity and considers that the placement of alcohol in multiple locations throughout stores contributes to this impression, as well as encouraging impulse buying.

*(iii) Rationale for government intervention*

8. Following a request from the Scottish Executive to consider what action could be taken on a voluntary basis, retailers were not able to offer sufficient voluntary action on the siting of alcohol in stores. We acknowledge that trade bodies had taken advice to the effect that companies would need to be very careful to ensure that any agreed voluntary action to restrict the positioning of alcohol would not breach the Competition Act 1998.

9. The Scottish Government's view is that taking no action in this area would be inconsistent with the licensing objectives set out in the Licensing (Scotland) Act 2005, in particular "protecting and improving public health". While the Government acknowledges the view that the siting of alcohol displays will not by itself change Scotland's alcohol culture, it is an important step on a longer journey, as part of an alcohol misuse strategy to start to shift attitudes away from the normalisation of alcohol as an ordinary commodity.

## **Consultation**

10. The Executive produced draft regulations which were consulted upon between October and December 2006. Consultees included all local authorities and licensing boards in Scotland, the key licensed trade organisations and a range of other stakeholder groups. Separate RIAs were not produced at this stage for each set of regulations that were consulted upon, although a full RIA was prepared in respect of the Act as a whole.

11. The initial consultation was based on a proposal that separate display area conditions could be applied to particular premises by licensing boards. The draft regulations stated that alcohol could only be displayed in an area inaccessible to the public or physically cordoned-off from other parts of the premises; a "shop within a shop" approach. This option was criticised by the trade as being unwieldy, costly, and impractical, especially for smaller retailers. Others questioned the rationale of allowing boards to apply the condition on a case by case basis when alcohol problems are prevalent across Scotland a patchy approach across the country could result.

12. As a result of this consultation, the draft regulations were amended, in discussion with key stakeholders, to provide the draft that has been laid before Parliament which proposes a simplified mandatory condition.

## **Options**

13. The following options were considered.

13.1 Option 1 – status quo. A "business as usual" approach which allowed complete freedom to off-sales premises would clearly be preferred by the trade but is not judged to be the correct approach given the risks to Scotland's health from alcohol misuse.

13.2 Option 2 – separate display areas which would require that all alcohol products were displayed in one part of a store and/or one part inaccessible to the public, through a

mandatory condition. This would create a level playing field for all off-sales premises and avoid different approaches being taken by individual licensing boards.

## **Benefits**

14. The Scottish Government is not convinced that option 1 would achieve any benefits. We do not believe that retailers will wish to voluntarily change practices that are tried and tested as a way of selling a product and which are designed partly to encourage purchasing. Retailers would benefit from option 1 where they would continue to have complete flexibility around the sale of alcohol.

15. In respect of option 2, the direct benefit would be a contribution to a change of attitude towards alcohol. A medium- to long-term secondary effect of attitude change may be a shift towards a culture which recognises that responsible, moderate consumption can be part of a healthy society but which makes clear that alcohol should not be seen as an ordinary commodity. The measures may also assist a decrease in alcohol misuse. It is recognised that it may take some time to see the benefits of these measures, and wider measures, to change culture.

## **Costs**

16. Option 1 – doing nothing – is a no cost option for retailers. Option 2 presents costs for some retailers. Although the proposals being put forward no longer require that alcohol display areas are separated from the rest of the store physically, nor do they require turnstiles or gated entrances to the alcohol display area or separate checkouts, there will be costs for those retailers who need to rearrange their store or move stock to one area. It is not possible to quantify the cost for individual retailers nor is it possible to make a generalisation. Some premises, including some large supermarkets, have separate display areas at present so these regulations would not create any additional cost for them. Others, for example, those which have numerous displays will need to rearrange displays in order to comply with the regulations. Furthermore, premises which choose to sell refrigerated alcohol products may incur costs in relocating refrigerated displays so that they are within the alcohol display area. Clearly those premises will need to decide whether to incur the cost of relocating fridges or stop chilling alcohol products. In practice, many of the secondary display areas currently used are temporary or seasonal. The lead time for the coming into force of the mandatory conditions allows businesses ample opportunity to plan ahead and avoid the costs of moving stock.

17. The regulations do not limit the amount of stock retailers can display. The size of the alcohol display area is not determined by these regulations and may be altered at any time, for example, for larger Christmas displays, in agreement with the licensing board, subject to payment of licensing fees.

## **Small/Micro Firms Impact Test**

18. During the consultation process in 2006, feedback on the original draft of the regulations from small business representatives such as the Federation of Small Businesses and the Scottish Grocers' Federation indicated concerns regarding practicality and compliance with disability legislation. The changes subsequently made to the policy resolve these issues by no longer requiring a solely inaccessible or cordoned-off area. Indeed, the current regulations reflect the operating method of many small retailers that have an alcohol display area plus a further display area behind the counter (inaccessible to the public) used for the display of higher value alcohol products. This may mean that many smaller retailers will already be compliant with the conditions these regulations would impose. If the amount of alcohol displayed is very small, for example in a gift

shop or tourist attraction, then creating one display area may be less onerous than creating one display area in a hypermarket.

### **“Test Run” of business forms**

19. The display area conditions do not create any new forms. Display areas will have to be delineated on the layout plans submitted as part of licence applications (see para 23 below).

### **Competition Assessment**

20. The amount of alcohol that can be displayed need not be affected by these regulations. The size of the display area available will be dictated by the size of premises and the amount of the premises that the owner wishes to give over to the display of alcohol. Regardless of these regulations, that information would need to be set out in the layout plan required by the Act. In respect of the removal of cross-merchandising, this will impact on some premises that operate in this way but it is not a practice that is adopted by all retailers. The regulations therefore create the same rules for all premises regarding the display of alcohol, but do not limit other aspects of competition, notably price, how alcohol is promoted, and the attractiveness and prominence of the displays within the overall display area.

### **Enforcements, sanctions and monitoring**

21. The regulations would insert the display requirements as a mandatory licensing condition under schedule 3 of the 2005 Act, therefore failure to comply with the requirement will be dealt with by licensing boards as a breach of a licence condition with a range of sanctions available including written warnings, suspension or revocation of the licence. This is consistent with all other breaches of licensing conditions under the Act, in relation to any licensed premises.

22. The monitoring of compliance will be a task for the new Licensing Standards Officers created by section 13 of the 2005 Act.

### **Implementation and Delivery Plan**

23. The mandatory conditions would apply to premises licences with effect from 1 September 2009. Before that date, all premises in Scotland will be applying for licences under the provisions of the Licensing (Scotland) Act 2005. Part of the application process involves the production of a layout plan. The area for the display of alcohol will be shown on that plan and agreed with the licensing board. It is worth noting that the requirement to produce a layout plan is a requirement of the Act and not a requirement of these draft regulations. Each premises will be notified twice by the licensing board of the date by which application must be made. Applications will need to be made by one of 4 set dates between 1 February 2008 and 1 September 2009. Because the conditions will not apply until 1 September 2009, premises have around 22 months to rearrange their displays, if necessary, to create display areas that are compliant with these draft regulations.

### **Post-Implementation Review**

24. The effect of the regulations will be kept under review in consultation with major stakeholders representing the off-sales sector, particularly the Scottish Retail Consortium, representing the larger supermarkets, and the Scottish Grocers' Federation, representing the convenience store sector. In addition, feedback from the licensing boards and Licensing Standards Officers will be considered, allowing the Government to examine compliance levels. In the longer term we would envisage that the effect of these regulations would be considered as part of a wider

review of the effectiveness of the new Licensing Act and the various conditions it creates. We expect that to be carried out within 10 years of the Act coming into force, i.e. before September 2019.

### **Summary and recommendation**

25. The Government considers that the regulations impose a minimal cost and burden on off-sales premises and that any restriction of existing business practices is fully balanced by the anticipated benefit of change in Scotland's attitude to alcohol. It is considered that the regulations are proportionate to the risks involved and that any voluntary approach or discretionary approach across the country would not contribute to culture change to the same extent as the Government's preferred option. It is recommended that the regulations be implemented as described.

### **Declaration**

26. I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed            Kenny MacAskill.....

Date             18<sup>th</sup> October 2007

**Kenny MacAskill, Cabinet Secretary for Justice.**

### **Contact Point**

Gary Cox  
Head of Licensing Team  
Room GW.15  
St. Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG  
Gary.Cox@scotland.gsi.gov.uk