The City of Glasgow Licensing Board welcomes the opportunity to comment on the general principles of the Alcohol Etc (Scotland) Bill. The Licensing Board recognises that alcohol misuse is a serious and widespread problem throughout Scotland and is committed to working with other interested stakeholders in order to try and tackle the social and health problems associated with alcohol misuse, particularly with regard to the Licensing Objective of Protecting and Improving Public Health.

The Licensing Board considers that in order to deliver long term sustainable change in relation to alcohol, key areas such as reducing alcohol consumption, supporting families and communities and improving support and treatment for those affected by alcohol require to be targeted. The Licensing Board considers that direct and effective action is required in order to tackle the cultural attitudes to alcohol across the country.

As the public body responsible for administering and regulating the liquor licensing system in the City of Glasgow, it would wish for the following issues to be taken into account in considering the general principles associated with the Bill:-

**Section 1 Minimum Price of Alcohol**

With regard to the proposals in relation to introducing a further mandatory condition on premises licences to the effect that alcohol must not be sold at below the minimum price, the Licensing Board considers that in order to be in any way effective, it would require to be introduced as part of a series of measures designed to tackle the problems associated with alcohol misuse, and in particular the cultural attitudes towards alcohol. The Licensing Board considers that a “one size fits all” approach will not provide a solution to these problems and that any such measures have to be part of a sustained and targeted educational programme.

The Licensing Board remains concerned that the introduction of minimum pricing could be contrary to European Union Law. The Licensing Board is aware that debate on this issue centres upon whether such proposals would have an impact on competition in the market but that such measures may be permitted if it is proportionate for a legitimate objective such as the promotion and protection of public health. The Scottish Government is therefore called upon to make public its position with regard to the Bill’s compatibility with EU law. The Licensing Board reiterates its call for a specialised task force to be set up through the Law Society to consider the legality of the proposal regarding minimum pricing.

With regard to the provisions contained within the Bill, the Licensing Board considers that the complexity of the proposed formula could lead to difficulties...
in effective monitoring and enforcement of minimum pricing, particularly given the divergence in the strength and volume of alcoholic products now available. This could mean additional resources for Licensing Standards Officers will be required.

The Licensing Board also notes that the provisions relating to minimum pricing are to be extended to occasional licences. While the Licensing Board agrees with this in principle, it is concerned as to whether the complexity of the formula will be readily understood by voluntary organisations applying for occasional licences under section 56 of the Licensing (Scotland) Act 2005.

**Section 2 – Minimum Price of Packages Containing More Than One Alcoholic Product**

The Licensing Board adopts its comments above in relation to section 1 of the Bill.

The Licensing Board is concerned that there may be issues with regard to the interpretation of section 2 of the Bill which could lead to difficulties in terms of proper enforcement of the provisions. For example, it is unclear how the provisions will apply to cocktails in on-sales licensed premises – will the price of a cocktail require to be equal to or more than its individual components? It would also seem from the definition of “alcoholic product” that this includes the container, and therefore in terms of section 2(2)(a), the requirement for the package to be sold at a price equal to or greater than the sum of the pieces would only apply where the container itself was capable of being sold separately.

Furthermore, it would also seem that the wording of section 2 would act as a deterrent to premises selling items individually as opposed to being part of a larger package as the provision only applies where all of the alcoholic products are also sold individually. This would seem to have the perverse effect of encouraging license holders to sell larger packages of alcohol than individual smaller units, thereby encouraging a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume, which is prohibited in terms of paragraph 8(2)(e) of Schedule 3 to the Licensing (Scotland) Act 2005. Clarification on this point is required.

**Section 3 – Off-Sales: Restriction on Supply of Alcoholic Drinks Free of Charge or at a Reduced Price**

The Licensing Board notes that section 3(2) of the Bill proposes to amend the provisions relating to irresponsible drinks promotions contained within paragraph 8(2) (b) of schedule 3 to the 2005 Act (the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)) so as to apply to off-sales as well as on-sales. This proposal is welcomed by the Licensing Board. It is further noted that drinks promotions which encourage persons to buy or consume larger measures will now only apply to on-sales. The Licensing Board welcomes this proposal as providing some clarity on an issue which has
proved controversial in relation to the monitoring and enforcing of irresponsible promotions.

While the Licensing Board welcomes these amendments, it remains disappointed that this opportunity has not been used to further clarify the law relating to irresponsible promotions. In the view of the Licensing Board, the drafting of the provisions of paragraph 8 of Schedule 3 to the 2005 Act have opened up a number of loopholes in relation to irresponsible drinks promotions which licence holders can legitimately exploit as compared to the situation previously under the 1976 Act where the Licensing Board had its own policy in relation to drinks promotions which was clear and unambiguous and capable of being effectively enforced without questions of interpretation arising as is the case now.

Section 4 – Off-Sales: Location of Drinks Promotions

While the Licensing Board generally welcomes the proposals relating to further restrictions on the location of drinks promotions in off-sales licensed premises, so as to avoid any issue of interpretation arising it would seek clarity on the meaning of “in the vicinity of the premises” as referred to in section 4(3) of the Bill.

Section 5 – Requirements for Age Verification Policy

While the Licensing Board is aware of the widespread problems relating to underage drinking, it is concerned as to how effective these proposals will be in practice. The Licensing Board notes that the Bill proposes to add a further mandatory condition to premises licences to the effect that there must be an age verification policy in relation to the sale of alcohol on the premises. However, the Board is concerned that this will simply be a paper based exercise and that irresponsible licence holders who sell alcohol to persons under the age of 18 may at a review hearing before the Board use the existence of such a policy as a defence that they took all reasonable steps to avoid underage sales occurring.

Section 6 and 7 – Premises Licences and Occasional Licences: Modification of Mandatory Conditions

The Licensing Board welcomes the provisions which will allow the Scottish Ministers to amend the Mandatory Conditions which apply to premises licences and occasional licences.

Section 8 – Off Sales: Sale of Alcohol to Under 21’s etc

The Licensing Board notes the proposals which would require the Licensing Board to include a detrimental impact assessment in its Licensing Policy Statement which would set out the extent to which the Licensing Board considers that off-sales to persons under the age of 21 in its area, or any locality in its area, is having a detrimental impact in that area or locality. While the Licensing Board agrees that there are widespread problems associated
with under age drinking and youth antisocial behaviour and disorder, and that 
the carrying out of a detrimental impact assessment may provide a useful 
assessment of these issues in order to assist in the development of other 
aspects of the Board’s policy, there may be some difficulty in objectively 
justifying that antisocial behaviour in a particular locality emanates from 
persons under the age of 21 to whom alcohol has been sold as off-sales and 
not as on-sales. It is recognised, however, that information from both the 
Police and the Local Authority may be able to assist with this.

With regard to the variation of premises licences so as to include a condition 
that off-sales of alcohol shall not be sold to persons under the age of 21, there 
may be some practical difficulty were this applied only in certain parts of a 
Board’s area, thereby potentially moving antisocial behaviour problems 
elsewhere. Equally, however, the Licensing Board may have difficulty in 
justifying a blanket approach in varying all affected premises licences across 
the entire Board area.

Section 9 – Premises Licence: Variation of Conditions

The Licensing Board has been concerned for some time that no procedure 
exists within the Licensing (Scotland) Act to amend or attach local conditions 
on premises licences without a Review Hearing which would require one of 
the grounds for review to have been established. While the Licensing Board 
generally welcomes the proposals contained within section 9 of the Bill, there 
could be issues with regard to whether it would be a breach of natural justice 
for a quasi-judicial body to unilaterally enforce conditions on a premises 
licence without the licence holder having the opportunity to make 
representations. Considerations should be given to including a mechanism for 
the Licensing Board to advise licence holders of its intention to attach or 
amend conditions, and that unless representations are made, the changes will 
apply from a certain date. Where representations are made, the provisions 
could allow for a hearing before the Board. A similar approach to that 
contained within paragraph 10 of schedule 1 to the Civic Government 
(Scotland) Act 1982 (Variations of Licences) should be considered.

The Licensing Board also questions whether the wording for the proposed 
new section 27A of the 2005 Act directly conflicts with the terms of section 
27(7) which provides that the Licensing Board cannot apply conditions which 
are inconsistent with the mandatory conditions.

Sections 10 and 11 – Social Responsibility Levy

The Licensing Board agrees that there is merit in requiring some alcohol 
licence holders to contribute financially to the furtherance of the Licensing 
Objectives and the costs to the Local Authority of dealing with the adverse 
consequences of alcohol misuse. However, the Licensing Board seriously 
doubts that it is legitimate to extend this to licences not covered by the 
Licensing (Scotland) Act 2005 to which the licensing objectives do not apply 
(i.e public entertainment licences and late hours catering licences, both of 
which are licensed under the Civic Government (Scotland) Act 1982.)
It is noted that the detailed provisions relating of the implementation of the social responsibility levy are to be included within regulations, but the Licensing Board would ask that the following issues are taken into account and addressed so as to make any such levy as effective as possible-

- If the criteria set relates to identifying certain localities as “hot spots”, for example certain city centre locations, then this would capture all licensed premises within that locality, subject to the local authority determining that individual premises should be exempt from the application of the fee.

It may be suggested that the Police could provide similar antisocial behaviour reports to those provided in terms of section 21 of the 2005 Act in order to identify areas where there is a particular problem with antisocial behaviour. However, the Licensing Board’s experience with the section 21 reports has been that it is often difficult or impossible for the Police to establish whether there is any causal link between the incidence of antisocial behaviour in a locality and the management and operation of individual licensed premises.

It is strongly arguable that applying a blanket fee to those premises in a certain locality without establishing any element of culpability could serve to punish those premises which apply the most stringent measures to prevent underage sales, promote responsible product stocking, provide additional stewarding arrangements etc. However, determining which licensed premises within a hot spot locality should be given an exemption without any empirical evidence as to culpability could prove to be a very subjective exercise and would likely be open to challenge.

- Likewise, to target late opening premises could unduly prejudice premises which have put in place measures as above to combat and prevent antisocial behaviour etc from occurring. It is difficult to see what criteria could be devised for considering exemptions so as to avoid anything but a subjective approach.

- With regard to identifying criteria to determine the “types of premises” that should be the subject of the fee, in the view of the Licensing Board it would be impossible to determine whether premises fall within that criteria or not. As there is only a single generic Premises Licence and Licensing Boards are unable to distinguish between licensed premises based on Operating Plans which do not provide any detail as to the ‘principal discernable activity’ taking place on the premises (contrary to recommendations made in that regard by this Board) or to any of the activities and entertainment taking place on the premises, it would be all but impossible to categorise premises in advance as those which are likely to cause or contribute to antisocial behaviour etc.

- The Licensing Board is of the view that if there is evidence to suggest that there is a direct link between crime, antisocial behaviour or other forms of public nuisance and individual licensed premises then it would review the
licence under either section 36 or 37 of the 2005 Act and take action as appropriate, which could include suspension or revocation if such action were proportionate to the offending conduct. The Licensing Board has been given wider powers under the 2005 Act to carry out a review of premises licences and therefore a commitment by Licensing Boards to utilising their powers could be an effective means of dealing with premises which have contributed to antisocial behaviour etc, as well as sending out a strong message to the trade as a whole that poor managerial control will not be tolerated. Criticisms may be levelled that premises are effectively being punished twice if they are the subject of both enforcement action and a levy payment.

- With regard to the proposal that a social responsibility levy should be attached to Occasional Licences as well as Premises Licences, this would suggest that events are being held which the Licensing Board considers could lead to antisocial behaviour etc. The Licensing Board has raised concerns in previous consultation responses, and directly with the Cabinet Secretary for Health and Justice, that under the 2005 Act it has no discretion to refuse to grant an occasional licence (for example for a large event in connection with a national sporting event) in the absence of an adverse report from the Police or Licensing Standards Officers. There is therefore a certain absurdity in providing local authorities with the power to charge a fee for occasional licence events where they believe there may be some adverse impact but not afford the Licensing Board the power to refuse to grant the application in the first place. This highlights a clear lacuna in the regulatory powers of Licensing Boards.

The Licensing Board also notes that the levy is only to be imposed in respect of expenditure incurred by any “local authority” which does not include either the Police or the NHS. Further detailed consideration would require to be given to where the costs associated with alcohol misuse are incurred.

Mairi Millar
Clerk
City of Glasgow Licensing Board
20 January 2010