

## Where Scotland has independence already

**Suzanne Davies, director of Clifton Davies Consultancy Limited**, and Robin Eaton, of DLA Piper in Edinburgh, focus on forthcoming licensing law changes in Scotland

**A**s this week's Scottish independence referendum has been approaching, I have been asked by a number of people whether a 'yes' vote will signal a change to the licensing system in Scotland. The precise answer is 'no' because Scotland already has its own licensing laws that differ from those applicable in England and Wales.

However, proposals for quite substantial changes to Scottish licensing laws are set out in the Air Weapons and Licensing (Scotland) Bill that is already being debated by the Scottish parliament. I did wonder if that meant that those against the proposals risk being shot with an air rifle, but Robin Eaton, who deals with licensing matters at DLA Piper in Edinburgh, assures me that is not the case. He has summarised the current position as follows:

The Bill was introduced on 14 May 2014, following a period of consultation. Its aim is to improve the effectiveness of the alcohol licensing regime introduced as recently as 1 September 2009 by the Licensing (Scotland) 2005 Act. The main themes in the Bill are as follows:

Reducing crime and preserving public order and safety – in this respect the Bill creates proposed new offences of supplying alcohol to children and young persons for consumption in a public place. This proposal expands the licensing objective requiring licensing boards to protect children from harm to include young persons as well and is intended to give the police powers to deal with the problem of groups of underage youths being supplied with alcohol for consumption outdoors.

Providing Boards with powers to consider a broader range of information – the Bill proposes that licensing boards re-introduce a "fit and proper test" – such a test existed previously under the Licensing (Scotland) Act 1976, but was abolished by the 2005 Act.

Licensing boards should take into account spent convictions when reaching decisions on alcohol licensing, with a view to better ensuring that personal and premises licences are only granted to suitable applicants.

Advancing public health – unlike the position south of the border, the existing Scottish licensing law contains a public health licensing objective. The Bill contains measures designed to maximise the impact of existing public health measures, including a proposal that licensing boards are given the power to assess overprovision for their entire area rather than just in "localities".

The Bill also aims to improve the current licensing regime rather than undertaking a complete change to the system, with a focus on personal licences by extending (to nine months, beginning in the 12 month period before the date of expiry of the licence) the period in which a licence holder may apply for renewal of his or her licence. Also, if a personal licence is revoked (due to failure to complete or submit evidence of refresher training), instead of having to wait for the current five year period to elapse before re-applying for a licence, the holder will have to go through the process of applying for a wholly new licence.

In other changes, if the Bill is enacted as presently drafted:

Licensing boards will be required to produce an annual financial report to demonstrate administration is self-funding.

There will be a deemed automatic grant of licensing applications if a board fails to determine the application in a timely fashion.

Greater autonomy will be given to boards, enabling them to decide themselves whether a hearing or licence review proposal is required if the chief constable confirms the existence of a licence-holder's conviction, but makes no recommendation that the licence in question should be varied, suspended or revoked.

It is still too early to forecast when the Bill will become law, but in the meantime address any questions to Robin at [robin.eaton@dlapiper.com](mailto:robin.eaton@dlapiper.com).



## Questions & Answers



**Q: Would Scottish independence affect licensing and gambling laws in Scotland?**

A: My article on this page addresses the first part of your question. As far as gambling is concerned, in its document entitled 'Scotland's Future - Your guide to an Independent Scotland', the Scottish government states: "With independence, responsibility for the regulation of gambling will transfer to the Scottish parliament. An independent Scotland will have the powers to introduce additional measures to tackle problem gambling, through more effective regulation of the industry, in contrast to Westminster's approach of greater deregulation."

**Q: I am the premises manager of a bar in Scotland. What will happen to my personal licence or my bar if I don't do my refresher training within five years from its issue?**

A: As Scottish law presently stands, your licence would be automatically revoked and you would not be able to re-apply for five years. Subject to when it was issued, you may be too late already. Bear in mind that you must also provide evidence of the training to the licensing board within the requisite time period. You should expect the police to take action against your bar if you continue in place as the manager after your personal licence has been revoked.

**Q: I'm wondering whether my pub business in Glasgow will be affected by an increase in the national minimum wage if there's a 'yes' vote in the Scottish referendum.**

A: That would be a matter for the Scottish government, but it has signaled an intention that the minimum wage would rise at least in line with inflation if it achieves independence from the rest of the UK. It has also pledged to continue to support and promote the Living Wage campaign, maintaining that over 400,000 people in Scotland are currently working for less than the living wage and that the majority of these are women.

## Clifton Davies Consultancy Ltd



Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson Wilson LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.

E-mail: [dc@cliftondavies.com](mailto:dc@cliftondavies.com)

[sd@cliftondavies.com](mailto:sd@cliftondavies.com)

Web: [cliftondavies.com](http://cliftondavies.com)