

SPICe Briefing

Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

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Dr Richard Simpson MSP's Member's Bill – the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill – was introduced in the Scottish Parliament on 1 April 2015. It takes forward ten main proposals. These are:

- minimum pricing for packages containing more than one alcohol product,
- banning alcoholic drinks containing high levels of caffeine,
- age discrimination in off-sales,
- container marking in off-sales,
- community involvement in licensing decisions,
- restrictions on alcohol advertising,
- alcohol education policy statements,
- drinking banning orders,
- alcohol awareness training as an alternative to a fixed penalty fine, and
- notification of offender's GP.



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EXECUTIVE SUMMARY

Introduction

The Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill is a Member's Bill, introduced by Dr Richard Simpson MSP. The purpose of the Bill is to promote public health and reduce alcohol-related offending. The Health and Sport Committee is the lead committee at Stage 1.

The Bill would take forward ten broad proposals. These relate to:

- minimum pricing for packages containing more than one alcoholic product
- alcoholic drinks containing caffeine
- age discrimination in off-sales
- container marking in off-sales
- community involvement in licensing decisions
- restrictions on alcohol advertising
- alcohol education policy statements
- drinking banning orders
- alcohol awareness training as alternative to fixed penalty notices
- notification of offender's GP.

Minimum pricing for packages containing more than one alcoholic product

This proposal would build on existing restrictions on irresponsible drinks promotions. It would prevent a larger multipack (eg. a 12-pack of beer) being sold at less per can or bottle than a smaller multipack (eg. a four-pack of beer). Current restrictions only apply where a single bottle or can is also sold.

Alcoholic drinks containing caffeine

The Bill would ban pre-mixed alcoholic drinks containing high levels of caffeine. No specific caffeine level appears on the face of the Bill. Instead, Scottish Ministers would set the level in regulations. It is therefore not possible to say whether specific products would be affected.

The Policy Memorandum (paragraph 21) highlights research suggesting that drinking alcohol in conjunction with caffeine creates a greater risk of harm. The McKinlay Report (2009) noted a link between high levels of alcohol consumption (including the caffeinated tonic wine Buckfast) and offending behaviour.

Age discrimination in off-sales

This proposal would prevent licensing boards from imposing any licence conditions which would create a higher minimum age than 18 for off-sales purchases. Dr Simpson argues (Policy Memorandum, paragraph 33) that there is no justification for interfering in the rights of young people by increasing the minimum age at which they can purchase off-sales alcohol.

Container marking in off-sales

The Bill would enable licensing boards to require off-sales premises to mark alcohol containers so that alcohol drunk by under-18s could be traced back to the shop which sold it. The proposal would allow particular categories of off-sales premises or particular types of alcohol to be targeted.

There have been various container marking initiatives in Scotland and the rest of the UK. One of the earliest – Alcoholwatch in Newcastle – has been evaluated. The evaluation found the scheme to be a success. However, it emphasised that the scheme’s purpose must be seen as intelligence-gathering rather than as a direct means to tackle alcohol-related disorder.

Community involvement in licensing decisions

The Bill would change the requirements to notify people about licence applications, which Dr Simpson hopes would lead to more objections being lodged. There are two proposals:

- to extend the requirement to provide written notice of an application where there is no active community council, and
- to double the period for which certain public notifications must appear.

Dr Simpson put forward this proposal as an amendment to the Air Weapons and Licensing (Scotland) Bill. The Scottish Government gave a commitment to reviewing the relevant regulations. The amendment was withdrawn.

Restrictions on alcohol advertising

The Bill contains three proposals which would create restrictions on the location of alcohol advertising:

- fixed advertising (such as billboards and window displays) would be banned within 200 metres of schools, nurseries and children’s play areas,
- alcohol advertising would be restricted to the licensed areas of off-sales premises, and
- sponsorship by alcohol brands would be banned at sporting and cultural events principally targeted at those under the age of 18.

Dr Simpson argues that the “Loi Evin” has been successful in denormalising alcohol for children in France. It bans all alcohol-related TV and cinema advertising, as well as sponsorship.

There are self-regulatory approaches to these issues in the UK. The Advertising Standards Authority regulates alcohol advertising while the Portman Group of major alcohol producers has created a sponsorship code. Both codes ban initiatives designed to appeal to under-18s.

A number of alcohol businesses have also signed up to a previous UK Department of Health initiative to prevent billboard advertisements for alcohol appearing within 100 metres of schools.

Dr Simpson put forward parallel proposals as an amendment to the Air Weapons and Licensing (Scotland) Bill. The Cabinet Secretary expressed support for further restrictions on alcohol

advertising. However, he raised concerns that the criminal offences created should be appropriately targeted. The amendment was withdrawn.

Alcohol education policy statements

This proposal would require Scottish Ministers to publish, and review, an alcohol education policy statement every five years. The relevant documents would be laid before the Scottish Parliament, which Dr Simpson argues would increase scrutiny.

Drinking banning orders

Drinking banning orders (DBOs) would allow people who engage in criminal or disorderly behaviour when drunk to be banned from certain licensed premises. DBOs would last between two months and two years. The length could be reduced by up to half if the subject undertakes an “approved course” designed to address their drinking behaviour.

DBOs would be imposed by application to the civil courts by a local authority or the chief constable. They could also be imposed on conviction in criminal proceedings where the offender was drunk when they committed the offence.

There are existing court interventions which can be used to address drinking behaviour. These include alcohol treatment orders (imposed as part of a community sentence) and antisocial behaviour orders.

Alcohol awareness training as an alternative to fixed penalty fine

This proposal would introduce the option for offenders to undergo alcohol awareness training as an alternative to a fixed penalty notice for alcohol-related antisocial behaviour offences. It builds on a pilot project in Kirkcaldy.

The Bill would require Scottish Ministers to set up a further pilot scheme in an urban area. Only if this was successful would alcohol awareness training be rolled out across Scotland.

Notification of an offender’s GP

This proposal would place a requirement on the courts to notify an offender’s GP where alcohol was a factor in their offending behaviour. Dr Simpson argues that this can only increase the likelihood of a patient receiving treatment.

However, the Bill places no requirement on the GP to act. There is also no requirement on the court to take steps to find out who an offender’s GP is.

GP organisations opposed this proposal, raising concerns about its impact on GPs’ professional duties and the disclosure of information on medical records.

INTRODUCTION

The Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill – the “Alcohol Bill” – is a Member’s Bill. It was introduced in the Scottish Parliament by Dr Richard Simpson MSP on 1 April 2015. The [Bill \(as introduced\)](#) is accompanied by [Explanatory Notes](#), a Financial Memorandum and a [Policy Memorandum](#).

The Bill would take forward a number of proposals. These can be summarised as follows:

1. **Minimum price for packages containing more than one alcoholic product** (section 1) – this would extend the existing ban on discounted alcohol sales by preventing retailers from selling larger multipacks of alcohol at a discount in comparison to smaller multipacks.
2. **Alcoholic drinks containing caffeine** (section 2) – this would ban ready-mixed alcoholic drinks containing caffeine above a specified limit.
3. **Age discrimination in off-sales** (section 3) – this would prevent licensing boards putting in place a higher age limit than 18 for the sale of alcohol as a condition of an off-sales licence.
4. **Container marking in off-sales** (section 4) – this is better known as “bottle-tagging”. It would allow licensing boards to require off-licences to mark alcohol containers with a code. It would then be possible to trace alcohol consumed by underage drinkers back to the shop that sold it.
5. **Community involvement in licensing decisions** (section 5) – this would change the requirements to notify people about licence applications and variations. The intention is to increase community involvement in licencing decisions.
6. **Restrictions on alcohol advertising** (sections 6 – 13) – these sections would ban most alcohol advertising near places (such as schools) used by children and at events targeted at children. They would also limit alcohol advertising on retail premises.
7. **Alcohol education policy statements** (section 14) – this would require the Scottish Government to publish, and review, an alcohol education policy every five years.
8. **Drinking banning orders** (sections 15 – 29) – these sections would enable the courts to ban someone from drinking in certain licensed premises if they engage in criminal or disorderly behaviour when drunk.
9. **Alcohol awareness training as an alternative to fixed penalty fine** (section 30) – this would allow training to be offered as an alternative to a fine when an offence is committed under the influence of alcohol.
10. **Notification of offender’s GP** (section 31) – this would require that an offender’s GP is notified by the courts where the consumption of alcohol has been a contributory factor in their offending behaviour.

The Health and Sport Committee (henceforth “Health Committee”) was designated lead committee for Stage 1 consideration of the Bill. The Committee issued a “call for written views”, which closed on 24 June 2015.

BACKGROUND

THE CURRENT ALCOHOL LICENSING REGIME

The Licensing (Scotland) Act 2005 created a new alcohol licensing system. The Criminal Justice and Licensing (Scotland) Act 2010 made minor amendments to the 2005 Act. The Alcohol etc. (Scotland) Act 2010 introduced a number of more substantive provisions. The Air Weapons and Licensing (Scotland) Act 2015 made further changes, although most of its provisions are still to come into force.

The 2005 Act sets out licensing objectives, which form the basis of alcohol licensing decisions. They are laid out in section 4 of the 2005 Act as follows:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health, and
- protecting children from harm.

Licensing boards are responsible for setting policy and making decisions. In respect of a number of their functions, they must consult with local licensing forums representing those with an interest in licensing issues. Licensing standards officers are responsible for supervising compliance with the licensing regime in their local authority area.

The 2005 Act introduced a new system of licences: premises licences for any premises selling alcohol; personal licences for individuals authorising or supervising the sale of alcohol; and occasional licences for unlicensed premises where alcohol will be sold on a temporary basis. Examples of situations where occasional licences may be needed include a community hall being used as a wedding venue or a marquee at a local fair.

Premises licences can be divided into two categories. “On-sales” licences describe licences to sell alcohol for consumption on the premises. Pubs, nightclubs, cafes and restaurants would be examples of the type of premises which have “on-sales” licences. On-sales licences often also authorise alcohol to be sold for consumption off the premises.

“Off-sales” licences describe licences to sell alcohol only for consumption off the premises. Convenience stores, supermarkets and delicatessens would typically have this type of licence – as of course would shops which specialise only in the sale of alcohol – known as “off-licences”.

An application for a premises licence must contain an operating plan detailing how the premises will operate, including the hours during which alcohol will be sold. Anyone can object to the granting of a premises licence, and the chief constable has a specific role in providing reports in relation to criminal activity.

The 2005 Act permits venues which sell alcohol for consumption on the premises (such as pubs and nightclubs) to sell alcohol all day and night – i.e. for continuous periods of 24 hours or more. However, the legislation makes clear that a licence which would have such an effect should only be granted in “exceptional circumstances”¹. In practice, it is rare for pubs to be licensed for more than 16 hours a day. The 2005 Act only allows off-sales to be made between 10am and 10pm.

The 2005 Act contained a number of innovations in relation to licensing policy. These are discussed below.

¹ Licensing (Scotland) Act 2005, section 64.

Licensing policy statements

Local licensing boards are currently required to produce statements every three years detailing how they will exercise their functions². Licensing boards must consult local licensing forums and other interested parties in the preparation of such statements.

Overprovision

The licensing policy statement must contain a statement as to whether there is “overprovision” of licensed premises in any locality within the licensing board’s area. Overprovision can relate to licensed premises generally or a particular type of premises (for instance late night opening premises).

It is up to the licensing board to decide what constitutes a locality for the purposes of the assessment. Overprovision is one of the grounds on which a licensing board can refuse a licence.

Antisocial behaviour reports

The 2005 Act, as originally enacted, required the chief constable to provide a report when an application for a new premises licence was received. This detailed anti-social behaviour in the area surrounding the premises. The Criminal Justice and Licensing (Scotland) Act 2010 amended this duty so that the chief constable was only required to provide a report where the licensing board requested it.

The chief constable is still free to provide a report on his own initiative if he wishes to do so. Limiting the chief constable’s duty in this manner was considered to be a better use of police resources.

Mandatory conditions

The 2005 Act introduced the concept of national mandatory conditions which apply to all premises and occasional licences. These appear in the Schedules to the 2005 Act and can be modified by Scottish Ministers. They can be used to direct national policy on particular issues, such as requiring staff training or prohibiting irresponsible drinks promotions.

Licensing boards may also attach local conditions to licences. These may be specific to the premises and/or may apply generally to a particular category of licence.

Where any conditions attached to a licence are breached, it is possible to apply for a review of the licence. This is carried out by the licensing board. The board can decide to vary, suspend or revoke the licence as a result of the review.

Alcohol etc. (Scotland) Act 2010

The Alcohol etc. (Scotland) Act 2010 made further significant amendments to the licensing regime set out in the 2005 Act. These were primarily designed to tackle so called “irresponsible drinks promotions” which encouraged customers to purchase more alcohol than they may have initially intended. The provisions of the 2010 Act were generally implemented by additions to the mandatory licensing conditions.

² This will change to five years when the Air Weapons and Licensing (Scotland) Act 2015 comes into force.

The 2010 Act also empowered Scottish Ministers to set up a “social responsibility levy”. This would be paid by certain licence holders to mitigate any negative impact their activities had on the licensing objectives. Those affected include public entertainment licence holders and late hours catering licence holders, as well as premises licence holders.

A social responsibility levy has not yet been introduced. However, a “[public health supplement](#)” has been introduced. This increases the rateable value of large businesses (e.g. supermarkets) which sell both alcohol and tobacco products.

Minimum pricing

“Minimum pricing” refers to the concept that alcohol cannot legally be sold below a certain price per unit of alcohol in the package. Minimum pricing in Scotland was legislated for in the Alcohol (Minimum Pricing) (Scotland) Act 2012.

No minimum price per unit appears on the face of the 2012 Act. Instead, Scottish Ministers are able to set a minimum unit price using subordinate legislation. The Scottish Government has stated that its preferred minimum unit price is 50p per unit (Scottish Government online).

The 2012 Act has yet to be brought fully into force. It is currently the subject of court action by the Scotch Whisky Association (among others). The Association alleges that the Act breaches European Union law on free trade between member states and is therefore outwith the legislative competence of the Scottish Parliament.

Scotland’s senior court, the Inner House of the Court of Session, referred the case to the European Court of Justice in May 2014. The European Court of Justice issues binding judgments on the interpretation of European Union law.

The advocate-general of the European Court of Justice has since issued an [opinion](#) on the case³. The court is not obliged to follow the views of the advocate-general in its judgment, but often chooses to do so. In the advocate-general’s view, minimum pricing breaches EU principles. It can potentially be justified on health grounds, but only if it is shown to have more advantages and fewer disadvantages than alternative measures, such as taxation.

Once the European Court of Justice has issued its ruling, the case will return to the Court of Session for a final decision. The timing of this is likely to be late 2015/early 2016 (Scottish Government 2014).

Air Weapons and Licensing (Scotland) Act 2015

The Air Weapons and Licensing (Scotland) Act 2015 made a number of technical changes to the alcohol licensing regime. As noted above, the majority of its provisions are not yet in force. It provides for the following key changes:

- **The re-introduction of a “fit and proper” test.** This allows licensing boards to consider the character of anyone applying for a licence (including those involved in the management of a company). A licence application can be rejected if the applicant does not meet the fit and proper test.
- **Changes to the way “overprovision” operates.** This is designed to give boards more flexibility in considering whether overprovision exists, including making the best use of health data.

³ Case C-333/14 *Scotch Whisky Association and Others v The Lord Advocate*, Opinion of Advocate General Bot.

- **Making it a criminal offence for those over 18 to share alcohol with under-18s in a public place.**

SCOTTISH GOVERNMENT'S STRATEGIC APPROACH TO ALCOHOL

The Framework

The Scottish Government has recognised that Scotland has a damaging relationship with alcohol. In 2009, it published its strategy for re-aligning this relationship – [Changing Scotland's Relationship with Alcohol – A Framework for Action](#).

The Framework gives the Scottish Government a leadership role. It recognises that the Scottish Government will have to work with other organisations to deliver its aims. It also acknowledges that, ultimately, it will be up to individuals to make changes to their drinking habits.

The Framework identifies four areas for action. These are:

- reducing alcohol consumption,
- supporting families and communities dealing with alcohol-related problems,
- building positive public health attitudes (to deliver positive health choices), and
- improving treatment and support.

Under these headings, the Scottish Government has identified a range of activities to support its strategy. These vary from legislating on irresponsible drinks promotions to supporting diversionary activities among young people.

The focus in relation to reducing alcohol consumption is on legislating against irresponsible drinks promotions and “upselling” (when someone is offered a larger measure than they originally ordered). Minimum pricing would also contribute to this aim.

For families and communities, the emphasis is on supporting those affected by problem drinking. Social services have a role in this, as do those providing early-years education to children with problem-drinking parents. Measures to tackle anti-social behaviour caused by excessive drinking are also included.

In order to promote positive health attitudes, the Scottish Government has taken steps to control alcohol advertising, marketing and promotion. It has also called for action from the industry on price promotion and labelling. The Framework acknowledges that a number of these matters would be most effectively dealt with at a UK level.

The Framework's plans for improved treatment and support were accompanied by increased funding for alcohol-related health services. The Scottish Government's focus is on increasing the number of Alcohol Brief Interventions (ABIs – described in more detail below) and on clarifying the expected roles of various staff across the NHS. The Framework plan also takes forward health staff training.

Evaluation

NHS Health Scotland has been tasked with evaluating the effectiveness of the Scottish Government's Framework for action on alcohol. This includes annual reports summarising the year's work as well as thematic studies into particular aspects of the Framework. More

information is available from the dedicated [Monitoring and Evaluating Scotland's Alcohol Strategy website](#).

Fourth Annual Report

The [Fourth Annual Report](#) (NHS Health Scotland 2014) recorded a general decline in alcohol-related health harm and in alcohol consumption. It noted that the ban on irresponsible drinks promotions and the increased use of ABIs has probably contributed to this. However, it is likely that reduced affordability of alcohol – caused by the economic downturn – is also playing a substantial role in the decrease.

Social attitudes to alcohol

During this period, NHS Health Scotland [commissioned research into attitudes to alcohol](#) (Sharp, C et al 2014). This looked at responses to questions in the Scottish Social Attitudes Survey in 2013 in comparison to responses to the same questions in previous years. The results were mixed.

There was increased recognition of the harm caused by alcohol. Sixty percent of those responding thought alcohol was the drug causing the most harm in Scotland (as compared to 46% in 2004). Younger people were also less likely in 2013 than in 2004 to agree that it was acceptable to get drunk at the weekend.

There was still generally poor awareness of sensible drinking guidelines, although there was widespread recognition of the health consequences of harmful drinking. An increased number of respondents thought that people would think it odd if they didn't drink at all (31% in 2007 compared to 41% in 2013).

Availability of and need for specialist services

A further externally commissioned [research report looked at the availability of, and need for, specialist alcohol treatment services](#) (Clark, I and Simpson, L 2014). It found that additional Scottish Government funding had resulted in increased capacity to deliver services. Those interviewed generally reported a more holistic approach and better working relationships, including with the voluntary sector.

The research also aimed to establish a baseline ratio for access to treatment. It concluded that the "Prevalence-Service Utilisation Ratio" was 1:4.3. In other words, of those in the Scottish population with likely alcohol dependence, around one in four access specialist treatment services. This compares well to international standards.

Alcohol Brief Interventions

Alcohol Brief Interventions (or ABIs) are structured conversations which aim to motivate the individual concerned to reduce their alcohol consumption. An ABI should follow an assessment of someone's drinking behaviour. This is usually done via a short questionnaire.

ABIs are most effective for those with harmful or hazardous drinking. Those terms are used to describe drinking at a level which significantly increases the risk of harm to health.

ABIs should not be used for those who are "alcohol dependent" (in other words, addicted to alcohol). Such patients should be referred to specialist treatment services.

ABIs were defined in more detail in the previous HEAT target guidance relating to ABI delivery (Scottish Government 2013). A HEAT target was a target agreed between NHS boards and the Scottish Government aimed at improving access to, and effectiveness of, healthcare.

The guidance described an ABI as (page 1):

“a short, evidence-based, structured conversation about alcohol consumption with a patient/client that seeks in a non-confrontational way to motivate and support the individual to think about and/or plan a change in their drinking behaviour in order to reduce their consumption and/or their risk of harm.”

HEAT targets have been replaced by [Local Delivery Plan Standards](#). These still feature a standard dealing with ABIs. It states (Scottish Government online):

“NHS Boards to sustain and embed alcohol brief interventions in the three priority settings of primary care, A&E and antenatal and to broaden delivery in wider settings.”

A further Standard refers to access to specialist alcohol treatment. It states:

“90 per cent of Clients will wait no longer than three weeks from referral received to appropriate drug or alcohol treatment that supports their recovery.”

ALCOHOL STATISTICS

Societal costs of alcohol misuse

As part of its strategy to change Scotland's relationship with alcohol, the Scottish Government commissioned research (2010) to estimate the cost to society of alcohol misuse. The research took into account health, social care and crime costs as well as lost productivity and quality of life due to alcohol-related factors. It also considered what the researchers called “intangible costs” such as pain and grief.

Given the difficulty in measuring all these factors, the final figure should be considered as indicative only. The researchers estimated the costs to society of alcohol misuse in Scotland to be between £2,893 million and £5,416 million per year (uprated to 2015/16 prices⁴).

⁴ Real terms values are calculated using the latest GDP deflators produced by Her Majesty's Treasury – see <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>.

Alcohol consumption

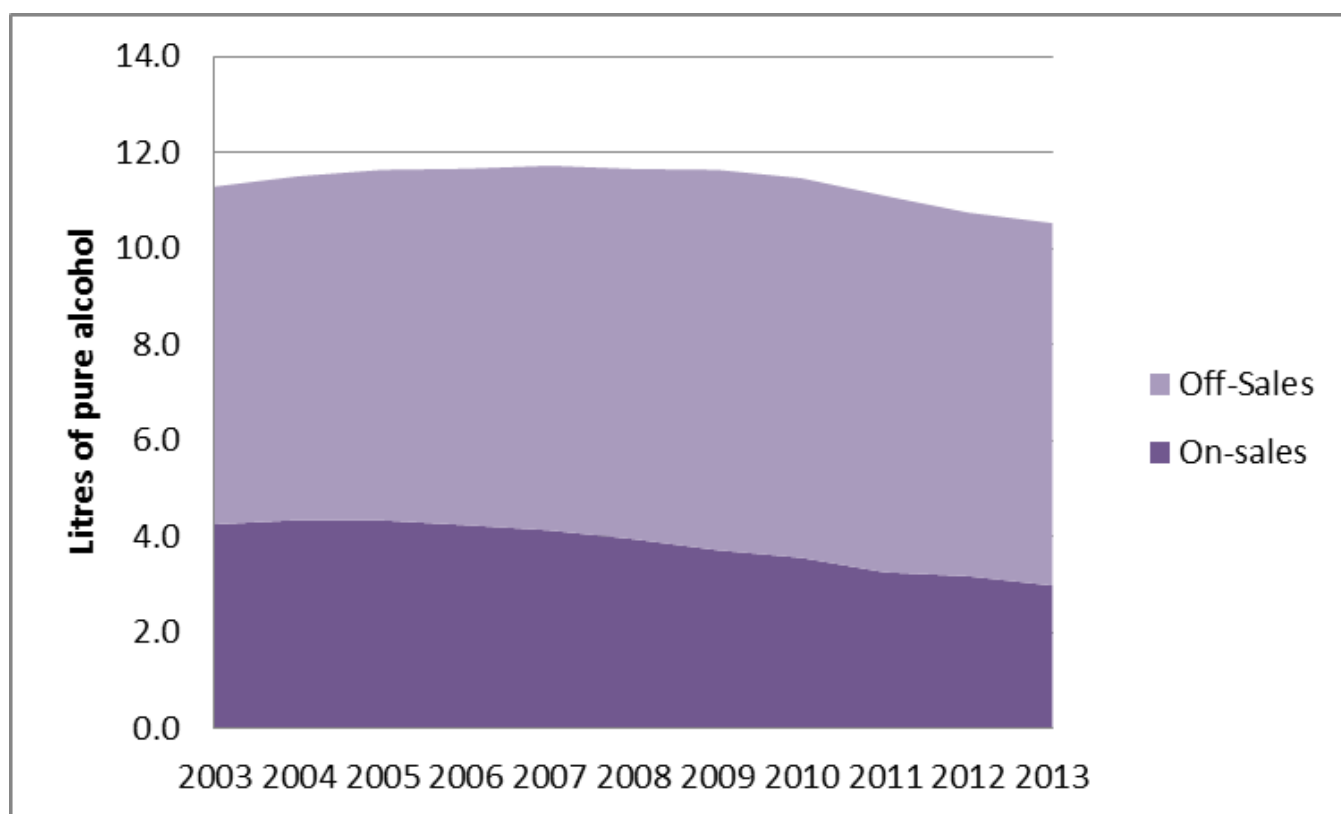
The figure below shows the volume of pure alcohol sold per adult (16 years or over) in Scotland between 2003 and 2013. The figures represent sales by most alcohol retailers in the period, although a small number of retailers do not provide data. Figures from 2011 onwards have been adjusted to account for those retailers which do not provide data.

Sales data are considered to be a more accurate source of information on alcohol consumption as survey respondents are thought to underestimate consumption when self-reporting.

Most alcohol is purchased to be consumed off the premises (“off-sales”) from places such as supermarkets and off-licences, rather than to be consumed on the premises (“on-sales”) from places such as pubs and restaurants. There has been a general downwards trend in the volume of alcohol sold in on-sales premises since 2004. Off-sales sales peaked in 2009 and have decreased each year since then.

It is worth highlighting that combined sales are still sufficient in each year for every adult in Scotland to consume more than the recommended weekly limit for a man (21 units) every week.

Figure 1: Litres of pure alcohol sold per adult (16 years or over) in Scotland between 2003 and 2013



Source: NHS Health Scotland 2014

THE ALCOHOL BILL

INTRODUCTION

The Alcohol Bill is a Member's Bill, introduced by Dr Richard Simpson. In developing the Bill, Dr Simpson issued a consultation – "[Shifting the Culture](#)" – in 2012. Fifty-five people and organisations responded to the consultation. Their responses are available on [Dr Simpson's own website](#). A [summary of responses](#) is also available (Scottish Parliament Non-Government Bills Unit 2014).

The Health Committee's call for written views closed on 24 June. The responses submitted as part of this exercise represent respondents' most recent views on the Bill's provisions. This briefing therefore discusses these responses rather than responses to the member's consultation. For a detailed analysis of views submitted as part of Dr Simpson's consultation, see the summary of responses highlighted above.

The Bill takes forward ten proposals, summarised below. Each strand of activity is discussed in more detail in the sections of this briefing which follow.

- minimum pricing for packages containing more than one alcoholic product
- banning alcoholic drinks containing high levels of caffeine
- age discrimination in off-sales
- container marking in off-sales
- community involvement in licensing decisions
- restrictions on alcohol advertising
- alcohol education policy statements
- drinking banning orders
- alcohol awareness training as alternative to fixed penalty notices
- notification of offender's GP.

MINIMUM PRICING FOR PACKAGES CONTAINING MORE THAN ONE ALCOHOLIC PRODUCT

The Licensing (Scotland) Act 2005 contains legislative provisions designed to end irresponsible drinks promotions and discounted sales. They were aimed primarily at on-sales premises. Provisions which targeted off-sales more effectively were included in the Alcohol etc. (Scotland) Act 2010.

The restrictions work by creating mandatory licence conditions banning certain types of promotion. The legislation enables these conditions to be automatically applied to every premises licence in Scotland.

In particular, the 2010 Act banned bulk purchasing discounts. This meant that it was no longer possible to sell bottles or cans in a multipack of alcohol for less than the price of one bottle or

can of the same product. To give a practical example, it is unlawful to sell a 12-pack of beer for less than 12 times the cost of an individual can of that brand of beer.

However, the current restriction on bulk purchasing discounts only applies where single cans or bottles are also for sale on the premises. Thus, it is still possible to sell a 12-pack of beer for less than three times the cost of a four-pack, so long as single cans are not also sold in the shop.

Section 1 of the Bill would seek to close this perceived loophole. It would prevent larger multipacks being sold at a lower price per can or bottle than smaller multipacks. Thus, where four packs and 12 packs of beer were on sale, the 12 pack could not be sold for less per can than the four-pack.

The provision would not apply to multipacks which also include non-alcoholic products.

Call for Written Views

Half (27) of the 54 respondents to the Health Committee's call for written views supported this provision. It was generally considered to close a loophole in the existing legislation.

Some respondents called for further restrictions on discounted sales.

Some respondents were concerned that the restriction could easily be circumvented by only stocking large multipacks. It would also be possible to get round the ban by selling non-alcoholic products as part of a multipack.

Licensed trade representatives highlighted specific issues for the retail and wholesale markets. There was a general concern that price controls were anti-competitive and would make Scotland a less attractive place to do business. It was also noted that the provision would add to the complex regulation in this area, creating bureaucratic barriers, especially to small businesses.

ALCOHOLIC DRINKS CONTAINING CAFFEINE

Section 2 of the Bill would ban "ready-mixed" drinks containing caffeine above a specified limit. Ready-mixed drinks are drinks which are supplied to the seller in a sealed container. A drink may also meet the definition of ready-mixed if it is supplied in more than one sealed container but is intended to be sold as a single item.

It would therefore appear that drinks mixed on licensed premises which contain high levels of caffeine (eg. an Irish coffee or vodka Red Bull cocktail) would not be covered by the definition. However, a pre-mixed can containing alcohol and a high caffeine energy drink would meet the definition and so be banned.

No specific caffeine limit appears on the face of the Bill. Instead, Scottish Ministers are required to set a limit via regulations. The first such regulations must be made within 12 months of the Bill receiving Royal Assent.

The Policy Memorandum (paragraph 18) notes that this approach will allow Scottish Ministers to set an appropriate level based on its overall approach to problem drinking. It will also allow the level to be changed in the future.

Background

The Policy Memorandum to the Bill highlights several academic studies which suggest that drinking alcohol in conjunction with caffeine creates a greater risk of harm (PM paragraph 21). This can be because the combination masks the effects of drunkenness, leading to impaired judgement of risk, or because people can continue to drink for longer due to the stimulant effect of caffeine.

The McKinlay Report

There has also been specific Scottish research which looked at the link between alcohol and offending in young men. [Alcohol and Violence among Young Male Offenders in Scotland 1979-2009](#) (McKinlay et al 2009) – also known as “the McKinlay Report” – combined survey questionnaires and qualitative interviews looking at young offenders drinking, drug-taking and weapon carrying habits.

It concluded that “extreme” drinking (drinking daily) among young offenders had increased significantly between 1979 and 2007 – from 7% to 40%. The proportion of young offenders who considered that alcohol had contributed to their previous offending also rose from 48% to 80%

One headline finding from the research was that 43% of offenders interviewed had drunk Buckfast tonic wine before committing their most recent offence. The full finding is as follows (page v):

“Of those who admitted to drinking before their current offence, and who could remember what they had been drinking, according to the 2007 survey 43.4% had consumed Buckfast tonic wine, 42.0% any type of spirits, 31.0% any type of beer and 21.0% any cider. Consumption of other types of alcoholic beverages was uncommon. Again interviews implied that alcohol intoxication escalated violent incidents as much as being the cause of them.”

The figures provided do not sum to 100%, indicating that some interviewees had consumed more than one category of alcohol before committing their offence.

The research concluded that alcohol played a key role in violent behaviour which needed to be addressed in preventative work. It noted a link between drinking alcohol and increased likelihood of carrying or using a weapon.

The researchers noted the prevalence of drinking Buckfast among young offenders. It was the most popular type of alcohol, the most commonly used and the type of alcohol most likely to have been drunk before committing the offender’s current offence. However, information from the qualitative interviews suggested young offenders considered that spirits were the type of alcohol most likely to lead to violence.

A further finding to come out of the qualitative interviews was that glass bottles were the weapons most commonly used in serious assaults. The researchers suggest that alcohol associated with offender populations (such as Buckfast) should be sold in plastic bottles.

Previous Scottish Parliament Scrutiny

Jackie Ballie MSP proposed an amendment to the Alcohol etc. (Scotland) Act 2010 which would have banned pre-mixed alcoholic drinks with a caffeine content of more than 150mg. Her amendment was considered by the Health and Sport Committee at Stage 2 ([22 September 2010](#)) and by the whole Parliament at Stage 3 ([10 November 2010](#)).

She argued that there was emerging evidence of the dangers of caffeinated alcohol. Other members highlighted associations between drinking Buckfast and violent crime. They also noted

that the consumption of Buckfast was causing significant problems in some of Scotland's communities.

Those who opposed the amendment argued that insufficient evidence had been presented to justify Jackie Ballie's approach. The Scottish Government noted that, to meet the requirements of EU law, it would be necessary to demonstrate that the measure was a proportionate way of protecting health or preventing crime. In the Scottish Government's view, this had not been done.

The amendment was disagreed to at Stage 2 and Stage 3.

Call for Written Views

Only nine of the 54 respondents to the Health Committee's call for written views supported this provision. A further 12 were against it, with the remainder expressing reservations or making no comment.

Generally, it was considered that there was insufficient evidence to support a ban on alcoholic drinks with a high caffeine content. Some respondents argued that action in this area would distract from more effective interventions – eg. to reduce overall consumption.

The Law Society of Scotland raised several technical issues. It argued that the caffeine limit should appear in primary legislation so that manufacturers would know whether their products would be affected. It also raised the possibility of conflict with EU law as the provision could be seen as creating new technical barriers.

AGE DISCRIMINATION IN OFF-SALES

The current alcohol licensing regime only permits sales of alcohol to those over the age of 18. However, licensed premises may voluntarily apply an age limit which is higher than this⁵. For example, a pub may have a policy of only serving those who are 21 or over.

Increasing the legal age at which alcohol could be purchased from an off-sales shop to 21 has been suggested in the past. It was argued that this may be effective in reducing alcohol-related harm and tackling anti-social behaviour.

The Scottish Government consulted on a proposal to increase the minimum purchase age for off-sales to 21 at a national level in 2008 (Scottish Government 2008). However, such a move was not supported.

The Alcohol etc. (Scotland) Bill originally contained provisions which would have allowed licensing boards to require a minimum age of 21 for off-sales in all or parts of their areas. However, opposition amendments during the bill's passage reversed this situation.

The Alcohol etc. (Scotland) Act 2010 prevents licensing boards from introducing a blanket requirement for an age limit of 21 or over for all – or particular categories of – off-sales premises. Licensing boards do, however, retain the power to impose a requirement to sell to only those who are 21 or over as a specific condition in individual licences.

Section 3 of the Bill would remove this power. It would prevent licensing boards from imposing any licence conditions which would create a higher minimum age than 18 for off-sales purchases.

⁵ Such a policy would also have to meet the requirements of the Equality Act 2010 to be lawful.

Dr Simpson argues that there is no justification in interfering in the rights of young people by increasing the minimum age at which they can purchase off-sales alcohol. The Policy Memorandum states (paragraph 33):

“But young people in the 18-20 age bracket are legally entitled to purchase alcohol, and the member believes that the law should treat them as responsible adults who have the right to make individual choices, rather than having their ability to exercise that rights restricted on the basis of over-indulgence by a minority of their peers.”

Call for written views

Thirteen of the respondents to the Health Committee’s call for written views supported this proposal, in comparison to the seven who were opposed. The majority chose not to comment.

Supporters argued that the provisions would ensure responsible young adults were not penalised for the irresponsible drinking of a minority. They also noted that problem drinking was less of an issue for young adults than it was for older age groups.

Some licensing boards (and other types of organisation) commented that they would prefer to retain the flexibility to introduce higher minimum age limits where appropriate.

CONTAINER MARKING IN OFF-SALES

Section 4 of the Bill would enable a licensing board to require off-sales shops⁶ to mark alcohol containers in such a way that would allow the premises selling the container to be identified. Licensing boards would be able to apply the requirement to all off-sales premises in their area or to specific categories of off-sales.

It would also be possible to apply the requirement to all alcoholic drinks or specific types of drink only. This would give the option of targeting the forms of alcohol generally favoured by underage drinkers.

The licensing board would only be able to impose such a condition if requested to do so by the police. The police would be required to detail, in writing, which off-sales premises the requirement should be applied to and which types of alcoholic drink should be included. The police would also be required to decide how the container mark should be applied⁷.

Where a licensing board decides not to comply with a request from the police to institute a container marking scheme, it must give the chief constable written reasons for its decision.

The Financial Memorandum to the Bill assumes that the costs of introducing container marking schemes would fall on licensing boards (and therefore local authorities) (paragraph 33). However, it is usually the person applying for or holding the licence that meets the costs of complying with any licence conditions. There is nothing in the Bill that would require these costs to be shifted to local authorities.

Background

There have been container marking initiatives in several areas in Scotland, including Dundee and Cupar. These have all been voluntary as licensing boards currently lack the power to change the conditions attached to existing premises licences. The Dundee scheme targeted

⁶ The Bill specifically defines off-sales premises in this context as those which are only licensed to sell alcohol for consumption off the premises.

⁷ Options include invisible marking by a UV pen or fixing specific labels to the product.

tonic wines, cider, alcopops and fizzy wine as the types of drinks likely to be popular with underage drinkers (Dundee City Licensing Board 2011).

SPICe is not aware of any evaluations of the impacts of such schemes in Scotland.

Newcastle was one of the first local authorities in England to pilot container marking. Its scheme is known as Alcoholwatch⁸.

The scheme was originally piloted in two council areas where alcohol-related disorder among young people was considered to be a problem. It was then rolled out to other areas in the city, including the city centre, where it was used to target problematic street drinkers.

The scheme was taken forward by the police rather than the local licensing board. Participation was voluntary.

The initiative was evaluated in 2008. The evaluation report (Barefoot Research and Evaluation 2008) noted that the primary purpose of the scheme was to gather intelligence about the sources of alcohol for underage and street drinkers. This information was then used to approach the off-licences in question. Action included discussions with shop-keepers about responsible sales of alcohol, as well as further surveillance or reports to the licensing board where appropriate.

Those involved in the scheme reported mixed results. In some areas, police officers were of the view that it had provided no information that they were not already aware of. However, in other areas it was seen as successful in reducing alcohol-related disorder.

In one example, police discovered that the shop under suspicion was not the source of alcohol for the problematic street drinkers. The shop which was found to be the source agreed not to sell several lines of alcohol favoured by street drinkers. The shop-keeper reported that the move had been good for business because, although sales had fallen, there was less shoplifting and he did not have to deal with verbal abuse.

The evaluation report concluded that Alcoholwatch was successful. However, its purpose had to be seen as intelligence-gathering rather than as a direct means to tackle alcohol-related disorder. The evaluation also emphasised the importance of commitment from those implementing the scheme as well as the impact of building good relationships with local off-sales premises.

Call for written views

There was a pretty even split between those who supported this proposal (12) and those who did not (11) in the Health Committee's call for written views. However, the majority of the 54 respondents either expressed reservations or offered no comment.

Those who supported container marking thought that it would aid police action and encourage responsible retailing. Several noted positive experiences from local container marking initiatives.

There was significant concern, especially among licensing boards, about the suggestion in the Financial Memorandum that the costs of implementation should fall on local authorities. Some licensing boards also highlighted likely enforcement costs.

Those who did not support the proposal expressed doubts about its effectiveness and cost-efficiency. In particular, it was noted that container marking alone would not provide evidence

⁸ The initial pilot was called Bottlwatch.

that a shop was selling to underage drinkers. Further evidence of who the sale was made to would be required.

Many respondents highlighted the issue of proxy-purchasing - where someone aged 18 or over buys alcohol on behalf of underage drinkers. This was known to be the main source of alcohol for this group.

The licensed trade tended not to support the proposal. Respondents highlighted the costs of compliance, as well as questioning its likely effectiveness. Morrison's Supermarket estimated it would cost £3.3 million for it to comply with a requirement to mark all alcohol containers, including employing 2.5 new staff at each store.

COMMUNITY INVOLVEMENT IN LICENSING DECISIONS

Section 5 of the Bill contains two proposals to extend community involvement in licence applications. The provisions would also apply to applications for a "major variation" to a premises licence. Major variations include, for example, extensions to the opening hours and changes to the types of activities (eg. live music) which take place on the premises.

As at present, anyone would be able to object to a licensing application.

The first proposal is that, where there is no community council for the area or the community council is inactive, written notification of the application must be given to all neighbours in a 50m radius. The current requirement is that neighbours within 4m of the premises must be notified of the application.

Community councils are voluntary organisations⁹ with representatives elected from the local community. Their role is to represent community views to bodies such as local authorities. Community councils will often comment on licence applications.

A [Scottish Government survey](#) (2013b) found that 84% of community councils were considered to be active. Those which were not active were more likely to be situated in deprived areas.

The proposal would result in more neighbours being directly notified of a licensing application. In urban areas, the number may rise substantially due to population density.

The second proposal is to double the public notification periods for licences, from 21 to 42 days. There are several forms of public notification required for licence applications. The extended period would apply to:

- notification of the application in a local newspaper or on the council's website, and
- a site notice displayed at or near the premises in question.

The Policy Memorandum notes (paragraph 56) that the purpose of the increased notification period is to give those affected more time to lodge an objection. In particular, it notes that the extended time period may allow active community councils to meet and/or to consult before a response is submitted.

Previous Scottish Parliament scrutiny

Dr Simpson tabled a Stage 2 amendment to the Air Weapons and Licensing (Scotland) Act 2015. The amendment was in exactly the same terms as section 5 of the Bill. It was considered by the Local Government and Regeneration Committee at its meeting on [20 May 2015](#).

⁹ They are established under the Local Government (Scotland) Act 1973.

When speaking in favour of his amendment, Dr Simpson said (col 3):

“Although the core of the amendment is to give greater rights to citizens, especially those in deprived areas, it would also extend the consultation period from 21 days to 42 days for active community councils and for the wider consultation that is proposed in the earlier part of the amendment. Community councils are unlikely to meet more than once a month, and they can sometimes meet less often at certain times of the year. The amendment would allow more time for consultation.”

The Cabinet Secretary for Justice responded in relation to the amendment. He noted that the regulations the amendment would target (the Licensing Procedure (Scotland) Regulations 2007) had not been updated since they were introduced.

He committed the Scottish Government to reviewing the 2007 Regulations when the Air Weapons and Licensing (Scotland) Bill became law. However, he stated that changing one aspect of the regulations might create unnecessary administrative complexity. His preferred approach was to consider the 2007 Regulations as a whole.

Dr Simpson withdrew his amendment with the agreement of the Committee.

Call for written views

Of the 30 respondents who expressed a definite view on this proposal, 18 supported it and 12 objected. A further six expressed reservations while 18 offered no comment.

Those who supported it welcomed the opportunity for greater community involvement. Objectors tended to see the proposals as creating red tape for businesses.

Licensing boards were split on the issue. Some supported the proposal because it would increase community involvement. Others did not for fear of the additional expense and administrative burden created by the extended notification requirements.

Particular concerns were expressed about the likely additional work requirements in urban areas. Some licensing boards suggested a smaller increase in the notification distance might be more workable.

Some respondents also suggested that the licensing process needed to be made more accessible if local people were going to be encouraged to participate.

RESTRICTIONS ON ALCOHOL ADVERTISING

Sections 6 to 13 of the Bill (and its schedule) would create restrictions on the location of alcohol advertising. These are primarily aimed at denormalising alcohol for children and young people. They may also impact on exposure to alcohol advertising for customers in shops licensed to sell alcohol.

Dr Simpson argues (Policy Memorandum, paragraph 68) that the proposed restrictions would complement existing regulation by the Advertising Standards Authority and the Portman Group. Their activities are discussed in more detail below.

The Bill would introduce three forms of restriction:

- Alcohol advertising would be banned within 200 metres of schools, nurseries and children’s play parks. In this context, advertising would only cover “fixed” adverts, visible to the general public, such as billboards, A-frames and window displays of alcohol containers.

- Alcohol advertising would be restricted to the licensed areas of off-sales premises. The member expects this to limit advertising to eg. the wine and spirits aisle in a supermarket.
- Alcohol advertising would be banned at sporting and cultural events principally targeted at those under the age of 18. In this context, advertising would also include branding on clothing.

Breach of the law would be an offence. There is provision for a maximum penalty of a £5,000 fine. However, it will also be possible for local authority officers and the police to issue fixed penalty notices instead of charging potential offenders.

Dr Simpson favours enforcement through the fixed penalty regime. The Policy Memorandum (paragraph 76) states:

“The member considers a criminal sanction, backed by a substantial maximum fine, necessary (as a back-stop) to ensure compliance with these restrictions, but believes that the fixed penalty regime would be much simpler and more effective in the majority of cases.”

There are exceptions to the advertising ban near schools, nurseries and children’s play parks. Adverts displayed in licensed premises and visible principally from within those premises would be exempt. Factual information about a licensed premises (eg. the name of the pub and the services provided) would also be exempt.

In the case of the restrictions on off-sales advertising and at sporting and cultural events, an offence can only be committed by a responsible person. A responsible person is the holder of the licence for the off-sales premises, or another person “having management or control” of the off-sales premises or sporting or cultural event.

Sporting events include any contest or display of sport to which the public are invited as spectators. A cultural event includes any public exhibition or performance which is not a film¹⁰.

In addition, where sporting or cultural events take place on premises which are part of a larger venue, the ban does not apply to the venue as a whole. The Policy Memorandum (paragraph 75) gives the example that an event for under 18s which takes place in one auditorium in a theatre would not impact on alcohol sponsorship in the theatre bar or foyer.

Background

The regulation of alcohol advertising

Alcohol advertising in the UK is regulated by the [Advertising Standards Authority](#) (ASA). The regime is a form of self-regulation.

The ASA is funded via a levy on direct mail services and the purchasing of advertising space. It is therefore funded by the industry it regulates rather than the taxpayer. The ASA argues that its “arms’ length” funding arrangement ensures its independence.

¹⁰ The law in relation to films is reserved to Westminster. Thus, any attempt to regulate advertising in this context is likely to be beyond the devolved competence of the Scottish Parliament.

The ASA regulates all forms of advertising, including print media, direct marketing, online advertising, radio and TV. It regulates radio and TV in co-operation with Ofcom.

The rules which the ASA enforces are written by the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice. The Committees' members are major business and professional associations associated with advertising, as well as the main broadcasters. The Committees are advised by expert panels.

The ASA notes that it rarely has to resort to sanctions to enforce its decisions. Usually, advertisers want to work with the ASA to ensure their advertisements comply with the relevant code.

However, the ASA does have significant sanctions at its disposal. These are based on the withdrawal of services by Committees of Advertising Practice members. For example, alerts can be issued requiring print media not to accept any adverts from particular businesses. Billboard space can be withdrawn. The ASA also works with online search engines to remove online adverts.

It is possible for the ASA to require that a repeat offender has all their advertisements pre-vetted before they can be published. The pre-vetting sanction lasts for two years.

The Committee of Advertising Practice's [UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing](#) has a specific section dealing with alcohol promotions. It makes clear that marketing communications should not link alcohol with social, professional or sexual success. Neither should they encourage anti-social or irresponsible behaviour.

Paragraphs 18.14 to 18.16 deal specifically with children and young people. They state:

“18.14 Marketing communications must not be likely to appeal particularly to people under 18, especially by reflecting or being associated with youth culture. They should not feature or portray real or fictitious characters who are likely to appeal particularly to people under 18 in a way that might encourage the young to drink. People shown drinking or playing a significant role (see rule 18.16) should not be shown behaving in an adolescent or juvenile manner

“18.15 Marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.

“18.16 People shown drinking or playing a significant role must neither be nor seem to be under 25. People under 25 may be shown in marketing communications, for example, in the context of family celebrations, but must be obviously not drinking.”

The Portman Group is an association of major alcohol producers. Among many other initiatives, it produces the [Code of Practice on the Naming, Packaging and Promotion of Alcohol Drinks](#) (2015). This covers the promotional activities of alcohol producers which are not dealt with by the ASA, such as labelling and merchandising. As with the ASA, the approach is one of self-regulation.

Decisions about whether products breach the Code are made by an independent panel. Retailers can be requested not to stock a product if a producer is not prepared to work with the panel to remedy a breach.

The regulation of sponsorship by alcohol producers

The Portman Group of major alcohol producers (discussed above) has also introduced a [Code of Practice on Alcohol Sponsorship](#) (2014). It applies to all businesses owning or representing alcohol brands or products which conclude alcohol sponsorship agreements in the UK.

Decisions about whether products breach the Code are made by an independent panel. Where the responsible business is not prepared to remedy the breach, other code signatories can be informed. These include music and sporting organisations. The intention appears to be to encourage other organisations to withhold services.

The Code contains similar prohibitions to the advertising code on associations with dangerous or irresponsible behaviour or sexual success. In addition, sponsors must show a recognisable commitment to promoting responsible drinking and/or supporting diversionary activities.

The main focus of the Code is in controlling the impact of alcohol sponsorship on those under the age of 18. The rules require the following:

- Drinks companies must not sponsor individuals under the age of 18 – although it is possible to sponsor a team or group with members under the age of 18 so long as 75% are at least 18.
- Drinks companies must not sponsor individuals, activities, events or groups with a particular appeal to – or primarily aimed at – under-18s.
- Drinks companies must not place their logo on merchandise which has a particular appeal to, or is primarily intended for, under-18s.
- Drinks companies must take reasonable steps to ensure they do not sponsor activities where less than 75% of participants or audience members are 18 or over. It is possible to sponsor particular areas, such as the bar, where three-quarters of attendees are likely to be aged 18 or over.

Department for Health action

Under the previous Coalition Government, the UK Department for Health spearheaded the [Public Health Responsibility Deal](#). This encouraged businesses to pledge to support various public health initiatives, including responsible alcohol consumption, reducing calories and salt in food and promoting physical activity.

There were a number of alcohol-related objectives. Particularly relevant to the Alcohol Bill was the pledge not to put advertisements for alcohol on outdoor poster sites within 100 metres of schools.

A wide range of drinks producers and retailers have signed up to this pledge. Although the initiative is English, many of those involved have a UK-wide presence and have applied the measures in Scotland too.

Previous Scottish Parliament scrutiny

Dr Simpson also tabled a Stage 2 amendment to the Air Weapons and Licensing (Scotland) Act 2015 replicating sections 6 to 13 of, and the schedule to, the Bill. It was considered by the Local Government and Regeneration Committee at its meeting on [20 May 2015](#).

In arguing for his amendment, Dr Simpson suggested that approaches to denormalise tobacco brand awareness, and to restrict alcohol brand awareness through the “Loi Evin” in France, had been successful.

The Loi Evin is the colloquial name for a piece of legislation in France, proposed by the then Minister for Health, Claude Evin. It bans all TV and cinema advertising for alcohol as well as any sponsorship by drinks brands of sporting and cultural events.

The Cabinet Secretary for Justice argued that greater scrutiny than could be provided for a Stage 2 amendment was needed for the proposals. He was particularly keen to ensure that the scope of any criminal offence was appropriately drawn. He did however give his support to further restrictions on the advertising of alcohol (Local Government and Regeneration Committee 2015, col 13).

With the Committee’s agreement, Dr Simpson withdrew his amendment.

Call for written views

Twenty-two of the 54 respondents to the Health Committee’s call for written views supported a ban on advertising near schools, nurseries and children’s play parks. Fifteen were against such a ban, with two expressing reservations and 15 offering no comment.

Support for the other advertising restrictions was less clear. Seven respondents supported the proposed restrictions on advertising in off-sales premises, in comparison to eleven who were against. Nine supported the restrictions on sponsorship of sporting and cultural events, as opposed to the ten who were against.

Broadly speaking, health organisations and some others supported advertising restrictions. Some respondents felt the proposals should go further, to include restrictions on cinema advertising or online promotions.

Industry representatives branded the proposals unworkable. There were particular concerns about the wide definitions in the Bill. A number of respondents also noted that self-regulation, through the Portman Group and Committee of Advertising Practice codes, was very effective.

Some respondents also raised concerns about how enforcement would work, particularly where any costs would fall. There were particular issues about the criminal offences the Bill would create. It was noted that it may be very difficult for people to ensure that activity was within the law. The Law Society of Scotland noted that a licence review – rather than criminal prosecution – would usually be the route pursued for these types of breaches.

In relation to the restrictions on advertising in off-sales premises, several respondents felt this would limit advertising which promoted responsible drinking, such as food and wine combinations. The Law Society highlighted that it was usual for entire supermarket premises to be licensed. It was therefore likely that the provision would be ineffective in limiting in-store advertising in many premises.

Many respondents expressed additional concerns about lost opportunities for young people to participate in sporting events if alcohol-related sponsorship was restricted.

ALCOHOL EDUCATION POLICY STATEMENTS

Section 14 of the Bill would place a duty on Scottish Ministers to publish an alcohol education policy statement every five years. The first statement would be required to be published within 12 months of the Bill receiving Royal Assent.

Scottish Ministers would be required to lay the statement before the Scottish Parliament. In addition, the Bill would require them to review the effectiveness of the previous education policy statement and lay this report, including any conclusions, before the Scottish Parliament.

The Policy Memorandum highlights (paragraph 88) that Dr Simpson would like to see greater parliamentary scrutiny of Scottish Government activity in this area. He notes (Policy Memorandum, paragraph 90) that monitoring and evaluation of the Alcohol Framework for Action already takes place. He therefore argues that the Bill's requirements would not be disproportionate.

Dr Simpson also acknowledges that there are concerns about the effectiveness of education initiatives when used in isolation. The World Health Organisation [concluded](#) (2009, page 1):

“While providing information and education is important to raise awareness and impart knowledge, by themselves, information and education to not lead to sustained changes in alcohol-related behaviour”.

Call for written views

Eight respondents to the Health Committee's call for written views supported the proposal, compared to two who objected. The remaining respondents had reservations (nine) or did not comment (35).

The majority of respondents from health and charitable organisations questioned the usefulness of such a provision. They noted that the current evidence shows that public education approaches are, on their own, not very effective at tackling public health problems. NHS Scotland in particular noted that such statements should not distract from other more effective measures being employed.

DRINKING BANNING ORDERS

Sections 15 to 29 of the Bill would create a framework for “drinking banning orders” (DBOs). These would allow people who engage in criminal or disorderly behaviour when drunk to be banned from certain licensed premises for up to two years.

Drinking banning orders with similar rules were introduced in England and Wales by the Violent Crime Reduction Act 2006. However, these were repealed by the Anti-Social Behaviour, Crime and Policing Act 2014. The UK Government did not evaluate their effectiveness.

It would be possible to impose DBOs in two circumstances:

- by application to the civil courts (sections 17 to 20), and
- on conviction in criminal proceedings (sections 21 to 25).

Only a local authority or the chief constable of Police Scotland would be able to apply for a DBO in the civil courts.

In both situations, the following requirements would need to be met:

- the individual concerned is aged 16 or over,
- they have engaged in criminal **or** disorderly conduct while under the influence of alcohol, and

- a DBO is necessary to protect other people or property from future criminal or disorderly conduct by the individual while under the influence of alcohol.

Where a DBO is to be imposed on conviction, it would also be necessary for the offender to have been under the influence of alcohol when the offence was committed.

Breaching a DBO would be an offence, punishable with a fine of up to £2,500.

DBOs would last between two months and two years. The intention behind the proposal is that the individual concerned could be the subject of whatever prohibitions would be necessary to protect others from their drunken conduct. This is argued to include banning them from pubs or off-sales premises, or both.

The Bill (Section 15(3)) would require the court to give specific consideration to banning the individual concerned from on-sales premises such as pubs and nightclubs. A number of those responding to the Health Committee's call for written views considered that the effect of this subsection would be to allow a DBO to ban individuals from on-sales premises only. Dr Simpson disagrees with this position.

The ban could apply to specific premises, to a particular category of premises (eg. all located in one area) or to all premises. However, there would be restrictions as to the impact of a DBO. A court could not include in a DBO a restriction which would prevent:

- the individual concerned from having access to their home,
- the individual concerned doing their job,
- the individual concerned attending education, training or medical treatment, or
- the individual concerned meeting any obligation imposed by a court.

There would also be a requirement for the court, on making a DBO, to explain its effect to the individual concerned, in ordinary language. If the individual concerned is not in court, the Bill makes provision for the clerk of court to provide the explanation in writing.

The Bill would also make specific provision for situations where someone has been convicted of an offence committed under the influence of alcohol, and the court chooses not to make a DBO. In these circumstances, the judge would be required to make a statement of the reasons for this in open court.

The Bill also makes provision for interim DBOs, appeals from court decisions and for DBOs to be varied or revoked on application by interested parties.

Approved courses

The Bill makes provision for a reduction in the length of a DBO if the individual concerned attends an "approved course" (sections 27 and 28). The Policy Memorandum states (paragraph 104):

"Approved courses (under the 2006 Act in England and Wales) were similar in content and structure to the drink drive rehabilitation scheme, and it is envisaged that they would be similar in Scotland."

Offenders can be referred to the [drink-drive rehabilitation scheme](#) where they are banned from driving as a result of a drunk-driving offence. The purpose of the course is to support individuals to change their drink-driving behaviour. There is a maximum fee to participants of £250.

In both civil and criminal proceedings, it would only be possible to refer someone to an approved course where:

- they agree, and
- the court is satisfied that a place on an approved course is available to them.

Scottish Ministers would be responsible for regulating and approving approved courses. The Financial Memorandum assumes (paragraph 75) that fees paid by participants will cover the costs of courses, so there will be no additional costs to the public sector.

Where someone completes an approved course successfully, it would be possible for the length of their DBO to be reduced by up to half. The court would indicate the appropriate reduction at the same time it makes the DBO.

Before seeking someone's agreement to attending an approved course, the court would be required to explain, in ordinary language, the effects of the requirement. This would include what fees the individual may have to pay. There is provision for the explanation to be provided in writing by the clerk if the individual is not in court.

If a court decides not to include a requirement to attend an approved course in relation to a DBO, it would be required to give its reasons in open court. However, this duty will only apply from the point that such courses become available.

Background

Alcohol treatment requirements

An "alcohol treatment requirement" can be imposed as part of a Community Payback Order under the Criminal Procedure (Scotland) Act 1995. Community Payback Orders are a form of sentencing which requires the offender to make some sort of payback to society, usually in the form of unpaid work. A Community Payback Order can include a range of additional requirements, such as supervision by criminal justice social work services, or attendance at programmes aimed to reduce offending.

An alcohol treatment requirement can be put in place where:

- an offender is dependent on alcohol,
- the dependency requires – and may be susceptible to – treatment, and
- arrangements can be made for the offender to attend such treatment.

It is worth noting that alcohol treatment requirements are applied only to those who are dependent on alcohol. It is intended that the proposed Drinking Banning Order (and related approved courses) would also be relevant to those whose drinking is harmful or hazardous.

The Policy Memorandum (paragraph 115) also suggests that it can take a considerable amount of time to put an alcohol treatment requirement in place. Dr Simpson argued that DBOs would be more effective in securing quick, preventative action.

Antisocial behaviour orders

Scottish Government [guidance](#) (2004) describes antisocial behaviour orders (ASBOs) as follows (page 1):

“Antisocial behaviour orders (ASBOs) are preventative orders intended to protect people in the community affected by antisocial behaviour from further acts or conduct that would cause them alarm or distress. An ASBO is a court order which prohibits, either indefinitely or for a specified period, a person from doing anything described in the order. Breach of an order is a criminal offence.”

The system for imposing an ASBO is similar to that proposed for DBOs. Local authorities and registered social landlords can apply for an ASBO in the civil courts. ASBOs can also be made on conviction in criminal proceedings. The court is required to explain to the individual concerned, in ordinary language, the effects of an ASBO.

An ASBO can prohibit its subject from doing anything described in the order. It can therefore be used in a wide range of circumstances. Indeed, its terms are wide enough to encompass banning an individual from particular licensed premises.

Injunction to prevent nuisance and annoyance

Injunctions to prevent nuisance and annoyance (IPNAs) were introduced by the Anti-social Behaviour, Crime and Policing Act 2014. They apply only in England and Wales, where they replace several anti-social behaviour-type orders, including Drinking Banning Orders.

IPNAs differ from ASBOs because they can impose positive behaviour requirements as well as prohibiting certain conduct. In addition, breach is not a criminal offence. Instead, it is punishable as contempt of court (which can include being sent to prison).

Call for written views

Only six of the 54 respondents to the Health Committee’s call for written views supported DBOs. A further 11 were against their introduction and the remainder either expressed reservations or made no comment.

Many respondents questioned whether there was a need for DBOs. Some argued that existing measures under licensing legislation and for antisocial behaviour were sufficient to deal with alcohol-related antisocial behaviour. Some also raised the risk of criminalising vulnerable people for what could be seen as a health issue.

Some respondents were of the view that DBOs would not apply to off-sales premises (although Dr Simpson disagrees with this position, as discussed above). Individuals would, by this interpretation, still be able to drink at home, which was argued to be less safe than drinking in the pub. Some viewed off-licences as more likely to be the source of problems than on-sales premises such as pubs and restaurants.

Respondents questioned the likely enforcement costs as well as who would provide approved courses.

The Scottish Courts and Tribunals Service raised several technical issues. It noted significant costs associated with having to explain in open court why a DBO had not been made. It also highlighted concerns about staff providing legal advice in the context of clerks being required to write to affected individuals to explain the effects of the DBO.

ALCOHOL AWARENESS TRAINING AS AN ALTERNATIVE TO FIXED PENALTY FINES

Section 30 of the Bill proposes to introduce the option of alcohol awareness training as an alternative to a fixed penalty notice for alcohol-related antisocial behaviour. It builds on a pilot

scheme which was set up in the Kirkcaldy area in 2009. This has since been rolled out across Fife.

Fixed penalty notices describe the option to pay a fine rather than be prosecuted for certain low-level offences. They are issued by the police. The process is laid out in the Antisocial Behaviour etc. (Scotland) Act 2004.

Only certain offences, listed in the 2004 Act, are eligible for fixed penalty notices. These include breach of the peace, being drunk and incapable in a public place, and disorderly conduct while drunk in licensed premises.

Under the Bill's provisions, the option of alcohol awareness training would apply where a police officer believed that someone was under the influence of alcohol when the offence was committed. The police officer would be able to revoke a fixed penalty notice if the individual concerned undertook the relevant training.

However, the Bill would not require these provisions to become operational as soon as it came into force. Instead, it would require Scottish Ministers to set up a pilot project in an urban area to test the approach. This must be evaluated by an independent person. The option of alcohol awareness training would only be rolled out across Scotland if the independent person recommended it.

Background

The Kirkcaldy scheme involved waiving the fixed penalty notice fine of £40 for antisocial behaviour if the individual concerned agreed to attend an Alcohol Brief Intervention (ABI). To have the fee waived, the individual had to actually attend the ABI within a set timescale. A Fife-wide organisation – Fife Alcohol Support Service – provided the ABIs.

The objectives of the scheme were to improve health, reduce binge drinking and to reduce the risk of coming into contact with the police (as a victim or offender) as a result of alcohol misuse. It targeted “binge drinkers” (harmful or hazardous drinkers) rather than alcoholics or those with a significant record of criminal behaviour.

The project was [evaluated](#) (Latto, D. et al) in 2009. The evaluation found that the project had been successful and should be rolled out across Fife. Of those who were referred to an ABI, 32% attended. This was higher than similar projects in England. Twenty-seven percent of participants said they would drink more safely in future, with a further 54% stating that they were thinking about it.

Call for written views

Eight respondents to the Health Committee's call for written views supported this proposal, while none objected to it. The remainder of the 54 respondents either expressed reservations or did not comment.

Licensing boards expressed concerns about funding arrangements for alcohol awareness courses. Several health bodies also suggested that the proposal may increase financial pressure on participants.

NOTIFICATION OF AN OFFENDER'S GP

Section 31 of the Bill would place a requirement on the courts to notify an offender's GP where alcohol was a factor in their offending behaviour. Its purpose (Policy Memorandum, paragraph 143) is to alert the GP to a potential health issue so that they can take appropriate action. Dr

Simpson argues (Policy Memorandum, paragraph 150) that this can only increase the likelihood of a patient receiving treatment.

There is, however, no requirement in the Bill for the GP to act.

The duty on the court to inform an offender's GP would apply where:

- the offender was aged 16 or over,
- they were normally resident in Scotland,
- at the time of the offence, they were voluntarily under the influence of alcohol, and
- the consumption of alcohol was a contributory factor in the commission of the offence.

There would be no requirement for the court to take steps to find out who an offender's GP is. Thus, no notification would occur where the offender: did not have a GP; could not remember who their GP was; or refused to provide their GP's name. In the case of refusal, Dr Simpson notes that, in these circumstances, the chances of the GP being able to work with the offender would not be high anyway (Policy Memorandum, paragraph 146).

Call for written views

This proposal had the least support in the Health Committee's call for written views. Three respondents supported it, in comparison to nine who objected, 11 who expressed reservations and 31 who offered no comment.

Most health organisations were concerned that notification had the potential to upset the relationship between doctor and patient. It was argued that more effective approaches were already available.

Organisations representing GPs were particularly opposed. Issues included uncertainty around the impact on a GP's professional duties, as well as the damage which could be caused by having conviction information on medical records accessed by employers or insurers.

The Scottish Courts and Tribunals Service raised technical problems with providing notification to GPs. Current systems would not be able to do this job and very high costs were anticipated in relation to creating a new system which would also meet data protection requirements.

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