ALCOHOL (LICENSING, PUBLIC HEALTH AND CRIMINAL JUSTICE) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill introduced in the Scottish Parliament on 1 April 2015:

- Explanatory Notes;
- a Financial Memorandum;
- Dr Richard Simpson’s statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 65–PM.
EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Non-Government Bills Unit on behalf of Richard Simpson MSP, the member who introduced the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

3. The Bill contains ten distinct measures with a single common theme – namely, the consumption (and over-consumption) of alcohol. The two main aims are to improve public health by discouraging irresponsible alcohol consumption, and to tackle the consequences in terms of antisocial and criminal behaviour. Subsidiary aims include reforming aspects of licensing law, and promoting more effective public policy on alcohol. Taken together, the measures in the Bill:

- place restrictions on the retailing and advertising of alcoholic drinks;
- make changes to licensing laws;
- place obligations on the Scottish Ministers to publish, review and report on its alcohol education policy; and
- direct certain people whose offending or antisocial behaviour is attributable to alcohol consumption towards treatment or restrictions on that consumption.

PART 1 – LICENSING AND PUBLIC HEALTH

CHAPTER 1 – ALCOHOL LICENSING

Section 1 - Minimum price of packages containing more than one alcoholic product

4. The Alcohol etc. (Scotland) Act 2010 introduced some restrictions on the multi-pack discounting of alcohol products, by preventing retailers selling larger multi-packs of a product at a cheaper unit price than smaller multi-packs. These restrictions consist of new mandatory licence conditions, added by the 2010 Act to schedule 3 (premises licences – new paragraph 6B) and schedule 4 (occasional licences – new paragraph 5B) to the Licensing (Scotland) Act 2005 (“the 2005 Act”). However, these 2010 Act restrictions only apply where the retailer also sells the product in question separately.

5. Section 1 of the Bill further restricts multi-pack discounting by preventing licensed premises from selling larger multi-packs of alcohol at a discount relative to smaller multi-packs even where a single can, bottle or other container of the same alcohol product is not sold in the same retail outlet. For example, the section would prevent a 12-pack of beer being sold at less
than twice the price of a six-pack of the same beer sold in the same size and type of container, even if that beer (in that size and type of container) is not for sale individually on those premises. Similarly, a case containing 12 bottles of wine (two each of six different bottles) could not be sold for less than twice the price of a half-case containing one bottle each of the same six bottles, regardless of whether the individual bottles are also on sale.

6. The section amends schedule 3 (premises licences: mandatory conditions) and schedule 4 (occasional licences: mandatory conditions) to the 2005 Act to this effect. The new mandatory licence conditions will apply to all premises and occasional licences that are in force on the day this section comes into force, together with any new such licences granted on or after that day. The new conditions will only apply to premises licensed in Scotland and would not, for example, affect retailers elsewhere in the UK selling alcohol to Scottish consumers by mail-order.

7. Subsection (2) introduces a new paragraph 6C into schedule 3 to the 2005 Act. Paragraph 6C(1) establishes that a multi-pack of alcohol is a package that contains two or more alcoholic products, whether or not they are identical. Such packages can only be sold at a price which is at least equal to the “appropriate multiple” of the price at which any comparable smaller package is on sale on the premises. Paragraph 6C(2) defines “comparable smaller package”, while paragraph 6C(3) defines the “appropriate multiple”. Taken together, this means that, for example, if the contents of the larger package are identical to the contents of three of the smaller packages, the larger must be sold for at least three times the price of the smaller.

8. Paragraph 6C(4) provides that the new paragraph 6C does not apply where existing paragraph 6B applies i.e. where individual cans or bottles are for sale (to avoid duplication). Paragraph 6C also does not apply where a multi-pack of alcohol is packaged together with a non-alcoholic product (for example, where wine is sold as part of a hamper containing food).

9. Subsection (3) introduces identical restrictions into the list of mandatory licence conditions that apply to occasional licences (by adding a new paragraph 5C to schedule 4 to the 2005 Act).

Section 2 - Alcoholic drinks containing caffeine

10. Section 2 (like section 1) amends the 2005 Act with the introduction of a new mandatory licence condition on both premises licences (see subsection (3)) and occasional licences (see subsection (4)). In each case, the condition prohibits the sale of ready-mixed alcoholic drinks containing caffeine at a level greater than a limit to be prescribed by Scottish Ministers in regulations.

11. The first sub-paragraph of the inserted condition (which will be paragraph 8A(1) of schedule 3 and paragraph 7A(1) of schedule 4) provides that ready-mixed alcoholic drinks containing caffeine at a level greater than the prescribed limit must not be sold on the premises.

12. Sub-paragraph (2) defines the term “ready-mixed” as applying to drinks supplied to the premises in a sealed container. This means that the sale of drinks mixed on the premises – such as a spirit combined with a caffeinated soft drink – is not prohibited.
13. Sub-paragraphs (3) and (4) mean that the sale of a package of drinks or drinks ingredients supplied to the premises for sale as a single unit that, when mixed, would produce a drink meeting the description at sub-paragraph (1) – i.e. a drink containing caffeine at a level greater than the specified limit – is also prohibited. This measure prevents manufacturers from reformulating their products by separating out and repackaging the caffeine and alcoholic elements of their drinks.

14. Sub-paragraph (5) creates a duty for the Scottish Ministers, by regulations, to specify the maximum level of caffeine for the purposes of sub-paragraph (1). Such regulations are subject to the affirmative procedure (that is, they require the approval of the Parliament, by resolution), and the first such regulations must be made no later than 12 months after Royal Assent. By virtue of subsection (2), which amends section 146 of the 2005 Act, such regulations are subject to the affirmative procedure (that is, they require the approval of the Parliament, by resolution).

15. The alcoholic drinks to which the new mandatory condition applies are those containing at least 0.5% alcohol (this being the definition of “alcohol” that applies throughout the 2005 Act, by virtue of section 2 of that Act).

**Section 3 - Age discrimination: off-sales**

16. Section 3 amends the 2005 Act to remove the ability of Licensing Boards to impose licence conditions which require the licensee to discriminate against adult customers on age related grounds. It also removes the ability of the Scottish Ministers to add such conditions to the lists of mandatory conditions applicable to premises and occasional licences, or to prescribe such a condition as one which Licensing Boards may in their discretion impose on such licences.

17. Subsection (2) amends section 6(3A) of the 2005 Act, which currently prohibits Licensing Boards from including in a licensing policy statement or supplementary statement any policy of prohibiting the sale of alcohol for consumption off licensed premises to persons “aged 18 or over but under 21”. The effect of the amendment is to apply this prohibition more widely to prevent any policy of age discrimination among adults (i.e. persons aged 18 or over).

18. Section 27 of the 2005 Act allows Ministers to add, remove or amend a mandatory condition applicable to premises licences, or to prescribe further conditions which a Licensing Board may in its discretion impose on such licences, and allows Licensing Boards to impose other conditions on a particular premises licence. New subsections (9A) to (9C) prevent these powers being exercised to require licence-holders to impose age-restrictions on the sale of alcohol to adults (e.g. by selling only to persons aged 21 or over). New subsection (9B) applies to Ministers’ power to add new mandatory conditions to the list, while (9C) applies to Ministers’ power to amend existing mandatory conditions.

19. Subsection (4) amends section 60 of the 2005 Act in exactly the same way in relation to occasional licences.
Section 4 - Container marking: off-sales

20. Section 27A of the 2005 Act gives Licensing Boards the power to vary the conditions attached to existing premises licences in their area (either generally or in respect of particular premises or categories of premises). However, the power to vary only applies to “any prescribed matter”, and the power to prescribe relevant matters has not so far been exercised by the Scottish Ministers. Therefore, at present, Licensing Boards cannot exercise this power.

21. Section 4 amends the 2005 Act by inserting a new section 27B, which gives local Licensing Boards the power to impose a “container marking condition” on “off-sales premises” in the Board’s area. Unlike the power in section 27A, the exercise of this power by Licensing Boards does not rely on any prior action by Ministers.

22. New section 27B(2) defines “off-sales premises” to mean premises licensed to sell alcohol only for consumption off the premises. As a result, container marking conditions cannot be imposed on premises licensed to sell alcohol for consumption on the premises (such as pubs).

23. Section 27B(3) gives a definition of “container marking condition”. The point is to allow individual containers (e.g. a beer can) to be discreetly marked in such a way that the premises from which they were sold can later be identified.

24. Section 27B(4) gives Licensing Boards very wide discretion in how they target those off-sales premises which are to be subject to a container marking condition. This is to enable them to focus on individual premises, particular types of premises, or premises in a specific area, where there is thought to be a particular problem with under-age drinking.

25. Section 27B(5) specifies that a container marking condition can only be imposed by Licensing Boards on written request from the Chief Constable (in practice, a local police officer with delegated responsibility). This keeps the initiative with the police, in line with their role in operating any container marking scheme. The request must contain details of the container marking scheme which the police wish to see put in place.

26. Under section 27B(6), the Licensing Board must provide written reasons to the police if it either departs from the terms set out in the request, or refuses the request altogether.

27. Under section 27B(7), sections 27A(4) to (10) of the 2005 Act apply in any case where a container marking condition is imposed, largely as they would apply to any variation of a premises licence under section 27A but with certain specific differences.

28. As a result:
   - A container marking condition has effect for the period specified by the Licensing Board in the variation (27A(4)).
   - The Licensing Board may only impose a container marking condition where it is satisfied that the condition “is necessary or expedient for the purposes of any of the
licensing objectives” (27A(5)). The licensing objectives can be found in section 4 of the 2005 Act.

- Before imposing the condition, the Licensing Board must give notice to certain key persons, and to the affected licence-holders (27A(6)). As modified by section 27B(7)(a), there is no requirement to publish notice of the proposed variation, and there is no obligation to notify the “enforcing authority within the meaning of section 61 of the Fire (Scotland) Act 2005” (since a container marking condition has no implications for fire safety). In addition, the modified wording makes clear that it is the variation proposed by the Board (rather than that originally requested by the police – if different) that is to be notified.

- Notice given under section 27A(6) as modified must describe the proposed container marking variation and the premises to which it would apply (27A(6A) – as inserted by 27B(7)(b)).

- That notice must also specify the date by which representations about the proposed variation may be made (27A(7)). As modified by section 27B(7)(c), that date must be 21 days after receipt of the notice, and the right to make representations applies only to those to whom notice is given.

- Where representations are received (within the 21 day time-limit), the Board must hold a hearing, and may give such persons who have made representations as the Board considers appropriate an opportunity to be heard (27A(8)).

- Where the Licensing Board makes a variation, it must amend each premises licence affected, notify the police and the affected licence-holders within one month, send a copy to each affected premises, and publicise the variation as it thinks fit (27A(9)).

- The variation does not have effect until notice has been given to the affected licence-holders (27A(10)).

29. Section 27B(8) gives Licensing Boards the power to revoke container marking conditions where they are no longer required or expedient in terms of the licensing objectives, but only after consulting the police.

30. Under section 27B(9), the same process that must be followed (under section 27A(9) as applied by section 27B(7)) when a container marking condition is first imposed must also be followed if it is subsequently revoked – that is, each affected licence must be amended, the police and the affected licence-holders must be notified (within a month), a copy of the revocations must be sent to the premises affected, and the revocations must be publicised as the Board thinks fit.

31. Section 27B(10) extends the power to vary the conditions of a premises licence (or revoke a variation) under section 27B(1) to provisional premises licences. A provisional premises licence can be applied for in advance while the premises are being built or converted and has no effect until confirmed by the Licensing Board on completion of the relevant work. By allowing a container marking variation to be made to a provisional premises licence, this provision ensures that such conditions can be in force from the first day on which newly-built (or newly-converted) premises are licensed to sell alcohol.
Section 5 - Applications for, or to vary, premises licence: consultation and publicity

32. Section 5 amends the Licensing Procedure (Scotland) Regulations 2007 (SSI 2007/453) (“the 2007 Regulations”) both to expand the scope of local consultation where no community council is active and to increase the length of time available to respond to a consultation on a new licence application or an application to vary an existing licence.

33. Section 21(1)(a) and (b) of the 2005 Act requires a Licensing Board, when it receives a premises licence application, to notify (among others) “each person having a notifiable interest in neighbouring land” and “any community council within whose area the premises are situated”. Regulation 4 of the 2007 Regulations defines “neighbouring land” as land (other than land that is part of a road or railway line, or covered by water) that is “within 4 metres in any direction of any boundary of the premises to which the application in question relates”. Subsection (2) of this section redefines “neighbouring land”, in cases where there is no active community council, to include the much larger area that extends up to 50 metres from the premises in any direction.

34. Regulation 6 of the 2007 Regulations requires the Board to advertise a premises licence (or variation) application on its website (for a continuous period of 21 days) or in a newspaper circulating in the area of the Board, and to allow at least 21 days for objections or representations to be made. Subsection (3) doubles both of these 21-day periods.

35. Regulation 7 of the 2007 Regulations requires the applicant for the licence to display an A4 notice at or near the premises for a 21-day period. Subsection (4)(a) doubles that period to 42 days (so it continues to match the period during which any notice appears on the Board’s website).

36. Regulation 7 also provides that, if the A4 notice is removed or defaced during the original display period (currently 21 days), the Board may require it to be re-displayed for a further period (also currently 21 days). Subsection (4)(b) amends this provision, but rather than simply doubling the further display period to match the original display period (i.e. by doubling it to 42 days), it allows the Board to set whatever further display period it considers necessary to ensure that the notice has been displayed, undamaged, for at least 42 days in total. For example, if the original notice had been displayed for 30 of the original 42 days before being removed or damaged, a further 12 day period would be sufficient.

37. Paragraph (8) of regulation 7 requires the applicant to submit a notice (the form of which is set out in Schedule 3 to the Regulations) confirming that the notice has been displayed for the requisite period or periods. Subsections (4)(c) and (5) make consequential changes to that paragraph and Schedule to reflect the fact that (by virtue of the earlier provisions) the original display period has been doubled in length to 42 days and the further display period is now of a variable duration.

CHAPTER 2 – RESTRICTIONS ON ADVERTISING OF ALCOHOL

38. Sections 6 to 13 set out the provisions in relation to certain restrictions on alcohol advertising.
Section 6 – Ban on alcohol advertising near schools etc.

39. This section creates an offence of knowingly causing or permitting the display of an alcohol advertisement in a prohibited place within a restricted area. The maximum penalty for such an offence is set out in section 10.

40. Subsection (2) defines “restricted area” as the area within 200 metres of school premises (which includes playgrounds etc. as well as school buildings), premises used principally as a nursery or crèche or outdoor premises designed or adapted for use as a children’s play area. As a result, there is no advertising ban in the vicinity of premises (such as a church hall) used only occasionally as a nursery or crèche. Nor is there a ban in the vicinity of indoor play areas, or in the vicinity of outdoor areas (such as parks) that are regularly played in by children but do not have facilities or equipment for that purpose (such as swings or climbing frames).

41. Subsection (3) defines what constitutes an alcohol advertisement, what constitutes “displaying” it, and what counts as a “prohibited place”. The net effect of these definitions (read together with subsections (1) and (2)) ensures that the ban covers a wide range of advertising methods – including billboards, posters, illuminated signs, A-boards on pavements, and shop window displays of bottles or cans. Advertisements would count as alcohol advertisements whether they are displayed on behalf of a manufacturer of alcoholic drinks (e.g. a brewer, promoting a particular beer), a retailer (e.g. a supermarket, promoting the low prices at which it sells that beer) or a third party (e.g. the organiser of an event that is sponsored by that brewer, promoting that event by reference to the brand of beer).

42. A “prohibited place” is defined to exclude advertisements in mobile locations (e.g. on the sides of buses) but not to exclude advertisements in a fixed place that move (e.g. flags or billboards on rotating panels). An advertisement is in a prohibited place only if it can be seen from a public place. So the ban does not prevent, for example, a person displaying a poster advertising alcohol within their own home. Read together with section 7(2), this also means that alcohol advertisements can continue to be displayed within licensed premises, so long as they are displayed so as to be visible principally from within those premises. The ban therefore restricts what may be displayed in the window of a pub or off-licence, but not what may be displayed on the walls or at the bar even if (for example) a poster on the wall or a pump clip at the bar can also be seen through the window.

Section 7 – Exceptions

43. Section 7 sets out two exceptions to the section 6 ban on advertising near schools etc.

44. Subsection (1) ensures that licensed premises (within 200m of a school etc.) are still able to display basic general information about their business. For example, a shop or pub could still display its name (e.g. “High Street Wines”, “The Crown”), the fact that it is an off-licence, wine merchant, free house, etc., and the name of the premises licence-holder.

45. Subsection (2) exempts certain advertisements displayed on licensed premises, as already mentioned in paragraph 42 above.
Section 8 – Advertising within licensed premises

46. This section creates an offence of knowingly causing or permitting the display of an alcohol advertisement in retail premises containing an area which is licensed to sell alcohol for consumption off the premises, except inside that area. This would permit, for example, alcohol advertisements being displayed in those aisles of a supermarket where alcoholic drinks are on display, but not in the food aisles. Both the licence-holder and the person who manages or controls the off-sales premises (if different) may be charged with the offence if they have knowingly caused or permitted the display of the advertisement. The maximum penalty for such an offence is set out in section 10.

Section 9 – Advertising at sporting and cultural events

47. Section 9 creates an offence of knowingly causing or permitting the display of an alcohol advertisement within premises being used as the venue for a cultural event (other than a film-show) or sporting event where either the majority of participants are under 18, or the intended audience consists mostly of those under 18. As the provisions only apply to events held at premises (as defined in section 147(1) of the 2005 Act), they do not apply to moving events (such as a city marathon or a street parade). Any person who manages or controls the event may be charged with the offence (whether or not it is that person who displays the advertisement, or who owns or manages the premises). The maximum penalty for such an offence is set out in section 10.

48. Subsection (2) provides that, if the venue for the event (e.g. an auditorium, gallery or sports hall) forms part of larger premises (e.g. an arts centre or sports centre), the advertising restrictions only apply to the specific venue and not to the rest of those larger premises.

Section 10 – Penalties

49. This section sets out the maximum fine that can be imposed on anyone prosecuted and found guilty of an offence under this Chapter. Level 5 on the standard scale is currently £5,000. (But see also section 12 and the schedule, which provide a fixed penalty alternative to prosecution.)

Section 11 – Offences by bodies corporate, etc.

50. This section makes provision for circumstances where an offence under this Chapter has been committed by a body corporate, Scottish partnership or unincorporated association. In particular, subsection (3) allows penalties to be recovered by “civil diligence” under section 221 of the Criminal Procedure (Scotland) Act 1995. Under that section, the amount of the fine may be recovered by such forms of diligence as an arrestment, the attachment of articles (i.e. goods or property) or a money attachment.

Section 12 – Fixed penalties

51. This section introduces the schedule, which describes the arrangements for fixed penalties for offences under Chapter 2 of Part 1. The provisions of the schedule are described in greater detail below.
Section 13 – Interpretation

52. This section defines key terms used in this Chapter by reference to how those terms are defined in the 2005 Act. In particular, “alcohol” is defined to exclude any drink whose alcohol content is 0.5% or less. As a result, it would not (for example) be an offence to advertise a low-alcohol lager in the vicinity of a school.

Section 14 - Alcohol education policy statements

53. Section 14 places a duty on the Scottish Ministers to produce statements of their policy on the provision of public information and education about the consumption of alcohol and to review the effectiveness of that policy and its implementation.

54. Subsection (1) sets out the Scottish Ministers’ responsibility to publish and lay the statements.

55. Subsections (2) and (3) deal with the timescales for the statements, namely that the first must be laid and published no later than 12 months after Royal Assent, and subsequent statements must be laid and published at intervals of no more than five years.

56. Subsections (4) and (5) require the Scottish Ministers, towards the end of the five-year period, to review the effectiveness of the policy set out in the statement and the steps taken to deliver it. They must lay before the Parliament, at least six months before the five-year period expires, a report of the review and its conclusions, which must include any changes to the policy that the Scottish Ministers consider desirable in light of the review.

PART 2 – OFFENCES ETC. INVOLVING ALCOHOL

CHAPTER 1 – DRINKING BANNING ORDERS

57. Chapter 1 of Part 2 creates a new type of court order (a “drinking banning order” or DBO) that can be used against any person who has engaged in criminal or disorderly conduct while under the influence of alcohol.

58. Section 15 defines the general nature and limits of the prohibitions that a DBO can impose on the individual against whom it is made (the subject). The purpose of any prohibition must be to protect other people from criminal or disorderly conduct by the subject of the order while he or she is under the influence of alcohol (section 15(2)). This includes protecting other people’s property from unlawful loss or damage (section 29(2)). In particular, the court may prohibit the subject from entering premises that are licensed to sell alcohol for consumption on the premises – and must include whatever prohibitions of that sort it considers necessary for the purpose set out in section 15(2) (section 15(3)). Such a prohibition may apply to all such premises, specific premises, or a category of premises, whether defined by geographical area or by description (section 15(4)). Other prohibitions (i.e. prohibitions on doing things other than entering premises licensed to sell alcohol on the premises) may also be imposed; but no prohibition may prevent the subject having access to places essential for key aspects of a normal
These documents relate to the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill (SP Bill 65) as introduced in the Scottish Parliament on 1 April 2015

life – the subject’s home or workplace, anywhere the subject is educated, trained or receives medical treatment, or anywhere the subject is legally required to attend (section 15(5)).

59. Each DBO must specify the period for which it applies (section 15(1)), and this period (the “specified period”) must be between two months and two years (section 16(1)). Different such periods may be specified for each prohibition (section 16(2)).

60. There are two separate routes by which a DBO may be made – either by application to the sheriff (under section 17) or by a criminal court at the time of convicting an offender for an alcohol-related offence (under section 21). In either case, a DBO is a civil order, although breach of it is a criminal offence.

Orders made on application (sections 17-20)

61. An application for an order under section 17 may be made by “a relevant authority” – namely, the police (the Police Service of Scotland, in the name of the chief constable), or by a local authority (section 29(1)). Whichever relevant authority makes the application must first have consulted the others – which, in relation to local authorities, means the local authority for the area in which the criminal or disorderly conduct is alleged to have taken place and (if different) that in which proposed subject normally resides (section 17(4)).

62. An application may only be made if the proposed subject of the order is 16 or over, and if it appears to the applicant authority that two conditions are met – namely that the subject has (after section 17 comes into force) engaged in criminal or disorderly conduct while under the influence of alcohol, and that a DBO is necessary to protect others from further such conduct (section 17(1) and (2)). The application is made to a sheriff court in the sheriffdom where the conduct allegedly took place, or in which the proposed subject of the order resides (section 17(3)). The sheriff may make the order if satisfied that the proposed subject of the order is indeed 16 or over and that the two conditions are met (section 17(5)).

63. If the order is made, either the sheriff (orally) or the clerk of court (in writing) must explain to the subject of the order its effect and the consequences of not complying with it, and must also explain how the order may be varied or revoked, and the subject’s right to appeal against it (section 17(6) and (7)) – although a failure to give such an explanation does not affect the validity of the DBO (and so, for example, would not constitute a ground of appeal) (section 17(8)). A copy of the order must be given to the subject and the applicant authority (section 20(1)(a) and (2)).

64. Section 18 allows the sheriff to make an interim order in advance of determining an application under section 17. The interim order can only be made if a section 17 application has been made and intimated to the proposed subject of the order, and if the sheriff is already satisfied that the proposed subject is 16 or over (section 18(1) and (2)(a)). The only other test is that the sheriff considers it just to make the interim order (section 18(2)(b)) – in other words, the sheriff can make the interim order before being in a position to determine whether the two conditions set out in section 17(2) are met, in order to impose limits on the subject’s conduct during the period required to make that determination. Once that determination is made, the interim order ceases to have effect (section 18(3)(b)). An interim order can include any
These documents relate to the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill (SP Bill 65) as introduced in the Scottish Parliament on 1 April 2015

provision that could be included in the final order (other than provision allowing the period of any prohibition to be reduced by completion of an approved course) (section 18(3)(a)).

65. If an interim order is made, the sheriff (orally) or the clerk of court (in writing) must explain to the subject its effect, the consequences of not complying with it, the sheriff’s power to recall it, and the subject’s right of appeal against it – although a failure to give such an explanation does not affect the validity of the interim order (section 18(4) to (6)). A copy of the interim order must be given to the subject and to the applicant authority (section 20(1)(b) and (2)).

66. Appeal rights in relation to an interim DBO are the same as those for an interim interdict (section 18(7)). Accordingly, under section 27 of the 1907 Act, an interim DBO or a decision not to make one is appealable (by either party) to the sheriff principal (or, once section 110 of the 2014 Act comes into force, to the Sheriff Appeal Court). There is currently a further right of appeal (with leave) to the Court of Session (under the 1907 Act), but this will no longer exist once the 2014 Act is brought into force.

67. A final (rather than interim) DBO made under section 17 may subsequently be varied or revoked on summary application made either by the subject of the order or by the applicant authority (section 19(1)). The application may be made either to the sheriff court that made the order or to a sheriff court in the sheriffdom where the subject normally resides (section 19(2)). Variation of an order may not extend the specified period (i.e. the period within which any prohibition has effect) beyond the maximum of two years (section 19(3)). An order cannot be revoked altogether unless at least half of the specified period (or the longest such period, if there is more than one) has elapsed – unless the authority which originally applied for the order consents to such an early revocation (section 19(4)). An application to vary or revoke a DBO cannot be made by a person who has appealed against the making of it or against an earlier variation or revocation of it, while that appeal is still in progress (section 19(5)). If the order is varied, the subject of the order and the applicant authority must be given a copy (section 20(1)(a) and (2)); and if it is revoked, they must be notified of the revocation (section 20(3)).

68. The Bill makes no specific provision for appeals against a DBO made under section 17. However, there are general rights of appeal against civil decisions made in the sheriff court, under the Sheriff Courts (Scotland) Act 1907, that would apply. Accordingly, an appeal against the DBO may be made (by either party) to the sheriff principal (under section 27 of the 1907 Act), and from there (or directly) to the Court of Session (under section 28 of that Act). These appeal rights will change when the Courts Reform (Scotland) Act 2014 comes into force, after which the initial appeal will be to the Sheriff Appeal Court (under section 110 of that Act), and a subsequent appeal (to the Court of Session, under section 113) will require the permission of one court or the other.

Orders made on conviction (sections 21 to 25)

69. The second route for making a DBO is where a person aged 16 or over is convicted of an offence and where that person was under the influence of alcohol at the time the offence was committed. In any such case, the court (a JP court, a sheriff court, or the High Court) must consider whether the two conditions set out in section 17(2) – the same conditions that apply to
an order made on application – are met, and (if so) whether to make a DBO. In reaching that
decision, the court may consider evidence led by the two sides (prosecution and defence) even if
that evidence would not have been admissible in the proceedings that led to the conviction
(section 22(1) and (2)).

70. If the decision is to make a DBO, the JP, sheriff or judge (orally) or the clerk of court (in
writing) must explain to the offender the effect of the order and the consequences of not
complying with it, and must also explain how the order may be varied or revoked, and the
subject’s right to appeal against it (section 21(4) and (5)) – although a failure to give such an
explanation does not affect the validity of the DBO (section 21(6)). Any DBO must be made as
an addition to the sentence (or other disposal) for the offence itself (section 22(3)). The DBO
comes into effect on the day it is made unless the offender is in custody, in which case it comes
into effect on the day of his or her release (section 22(4)). The subject of the order must be given
a copy of the order (section 24(1)).

71. If the court decides not to make a DBO, either because it considers that the two
conditions are not met, or despite deciding that they are met, it must give reasons (in open court)
for that decision (section 21(7) and (8)).

72. A DBO made on conviction, like a DBO made on application, may be varied or revoked
after it has been made. An application to vary or revoke it may be made by the subject of the
order or by the prosecutor (the Crown Office and Procurator Fiscal Service) (section 23(1)). An
application by the subject must be notified to the prosecutor, and vice versa (section 23(2) and
(3)). As with orders made on application, a variation cannot extend the specified period beyond
two years, and a revocation cannot take effect until half of the specified period has elapsed
(unless the prosecutor consents to earlier revocation) (section 23(4) and (5)). A copy of any
varied order, and notification of any revocation, must be given to the subject and the prosecutor
(section 24(2) and (3)).

73. Under section 25(1), a DBO made on conviction is treated as a sentence for the purpose
of an appeal against it by the offender, and any variation of such a DBO is also treated as a
sentence for the purpose of an appeal by the offender against the variation. The effect of this is
to allow an appeal by the offender against the making of the DBO or its variation, under section
106 of the Criminal Procedure (Scotland) Act 1995 (if the offender was convicted on indictment,
by a jury) or section 175 of that Act (if he or she was summarily convicted). The person making
such an appeal cannot apply for variation or revocation of the order while the appeal is in
progress (section 25(4)).

74. Sections 25(2) and (3) amend the 1995 Act to add references to DBOs into the list of
matters against which the Lord Advocate has a right of appeal, both in solemn cases (where the
offender was prosecuted on indictment) or in summary cases. These provisions give the
prosecutor a right of appeal against any DBO that is made, either on a point of law or on the
grounds that its terms were “inappropriate”, or both. The prosecutor may also appeal against a
decision not to make a DBO, on equivalent grounds.

75. Any appeal against a DBO made on conviction, or against its variation, is an appeal to the
High Court (sitting as a court of appeal).
Breach of DBO

76. Section 26 deals with breach of a DBO (whether made on application under section 17, or on conviction under section 21) or an interim DBO. A DBO is breached if the subject does anything he or she is prohibited from doing by the order, and does so without reasonable excuse. Any such breach is a criminal offence, punishable by a fine not exceeding level 4 on the standard scale (currently £2,500) (section 26(2)). In proceedings for an alleged breach, it is not possible to dispute the fact that the accused was the subject of the order, or to dispute the terms of the order, unless the matter disputed was the subject of a preliminary objection (section 26(3)).

Reduction of specified period where approved course satisfactorily completed

77. In making a DBO (either under section 17 or section 21), the court has the option of allowing the subject to shorten its period of application (or that of an individual prohibition) by satisfactorily completing an “approved course” (i.e. a course approved under section 27) (section 16(3)). A specified period may only be shortened in this way by up to a half (section 16(4)) – although Ministers may vary this proportion by regulations (made under section 16(11)). Such regulations are (under section 29(6)) subject to the affirmative procedure (that is, they require approval by resolution of the Parliament).

78. Provision to allow a DBO (or prohibition) to be shortened in this way (by satisfactorily completing an approved course) may only be included if the court is satisfied that a place on such a course will be available, and if the subject agrees to the provision being included (section 16(5)). The implications of agreeing – including what the course involves, and what fees may be payable – must first be explained to the subject, either orally or in writing (section 16(6) and (7)), although a failure to provide such an explanation does not affect the validity of the DBO or the provision in question (section 16(8)).

79. Although the court is not obliged to include such a provision (to allow a DBO or prohibition to be shortened by attending an approved course), it must give reasons in open court for not doing so – unless, at the time it makes the DBO, Ministers have not approved (under section 27) any such courses (section 16(9) and (10)). (This is different from the situation where courses have been approved, but places are not available. In that situation, the court could not include the provision – by virtue of section 16(5)(a) – but would still be obliged to state this reason in open court.)

80. An approved course is a course that has been approved for the purpose by the Scottish Ministers, following an application by the prospective course provider (section 27(1)). Ministers may regulate how such applications are made and any fee payable for an application (section 27(5)(a) and (b)). In deciding whether to grant or refuse the application, Ministers must have regard to the nature of the proposed course and to the suitability of the prospective course provider, and may also take into account recommendations made by anyone they appoint to consider the application (section 27(2)). If they approve the course, they may impose conditions, and must specify the period (of up to 7 years) during which approval has effect, subject to their right to withdraw approval at any time (section 27(3) and (4)). Other matters relating to the approval of courses may be specified in regulations made by Ministers (section 27(5)(c) to (f)). Regulations under section 27(5) are subject to the negative procedure (that is, they are subject to annulment by resolution of the Parliament: section 29(7)). Ministers may also issue guidance
about the conduct of approved courses, and must have regard to that guidance in carrying out their own functions (section 27(6)).

81. Satisfactory completion of an approved course is established by giving the clerk of the court that made the DBO a certificate from the course provider (section 28(1)). The course provider is obliged to give the subject a certificate unless the subject has not paid the fee for the course, has not attended the course in accordance with reasonable instructions, or has failed to comply with any other reasonable requirement of the course provider (section 28(3)). Ministerial guidance under section 27(6) may assist in defining what is meant by “reasonable” in these connections (section 27(7)).

82. The course provider must either issue the certificate, or give the subject written notice that no certificate is to be issued (specifying the grounds for that decision), and must do one or the other within 14 days of any request made by the subject (section 28(4) and (5)). If the course provider decides not to give the subject a certificate, or if a request under section 28(5) was not complied with, the subject may apply to the appropriate court for a declaration that section 28(3) has been contravened (section 28(6)). If, in order to decide whether to make such a declaration, the court needs to decide whether the course provider’s instructions or requirements were “reasonable”, it must take account of any guidance issued (under section 27(6)) by Ministers (section 27(7)). If such a declaration is made, it has the same effect as a certificate (section 28(7)).

83. Ministers may specify, in regulations, the form and content of a certificate (of completion of an approved course) (section 28(2)). They may also regulate the form of a notice (by which the subject is told that he or she is not to be given a certificate), the manner in which the notice is given and the time at which it is to be taken as having been given (section 28(8)). Any such regulations are subject to the negative procedure (section 29(7)).

Changes to the definition of “relevant authority”

84. As noted above, various references are made in Chapter 1 of Part 2 to a “relevant authority”, which is defined (in section 29(1)) as the chief constable of Police Scotland or a local authority. Section 29(3) allows Ministers to add further persons to this list (either for all purposes or some) by regulations. Any such regulations are subject to the negative procedure (that is, they are subject to annulment by resolution of the Parliament) (section 29(7)). Section 29(4) allows changes to be made (also by regulations) to the list of those who must be consulted by any relevant authority prior to making an application for a DBO under section 17 – including, for example, to ensure that any new relevant authority also becomes a consultee to any application by an existing such authority. These latter regulations are subject to the affirmative procedure (that is, they require approval by resolution of the Parliament) (section 29(6)).

Section 30 – Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty

85. Section 30 deals with fixed penalty offences involving alcohol and alcohol awareness training as an alternative to a fixed penalty.
86. Alcohol awareness training as an alternative to a fixed penalty is an early intervention scheme aimed at addressing binge drinking and associated anti-social behaviour. Offenders who would otherwise be liable for a fixed penalty fine and whose offending behaviour appears to be related to alcohol consumption are offered the alternative of participating in a programme about the dangers and consequences of alcohol misuse.

87. The Bill provides for the establishment of a further pilot in an urban area which, it is expected, would be on a similar basis to the scheme which has already been piloted in Fife, and for the rollout of the scheme across Scotland, subject to the further pilot being evaluated and judged to be a success.

88. Subsections (1) to (3) amend Part 11 of the Anti-social Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to provide a statutory basis for alcohol awareness training in the circumstances set out in new section 132A.

89. New section 132A specifies the circumstances where an offer to revoke a notice may be made by a constable – ie where a person was under the influence of alcohol – on condition that the person completes an alcohol awareness training session.

90. Subsection (3) amends section 133 of the 2004 Act by adding a new subsection (2A) to the effect that a fixed penalty notice will be revoked if the alcohol awareness training has been completed.

91. Subsection (4) requires the Scottish Ministers to designate an urban area where a pilot of the alcohol awareness training will be carried out and specify a date from which such training will be available in that area. The Scottish Ministers must appoint an independent person to carry out an evaluation of the pilot and to recommend whether the scheme should be rolled out throughout Scotland.

92. Subsection (5) provides that no later than 18 months after training first becomes available, the Scottish Ministers must lay before the Scottish Parliament and publish a report on the evaluation of the pilot.

93. Subsection (6) provides that, where the evaluator recommends that the scheme be made available throughout Scotland, this recommendation must be implemented no later than three years after the report is laid before the Scottish Parliament.

94. Subsection (7) sets out restrictions on who is eligible to be appointed to carry out the evaluation of the pilot, to ensure that person is independent.

**Section 31 – Offences involving alcohol: notification of offender’s GP**

95. Section 31 places a duty on a court which has convicted an individual aged 16 or over of an offence, where it appears that consumption of alcohol was a contributory factor in the offending, to notify the individual’s GP practice accordingly (where the practice is known).
96. Subsection (1) makes clear that notification is required only where an individual is convicted of an offence – so would not apply in cases of acquittal, even if it is not contested that the accused was under the influence of alcohol at the relevant time (e.g. when arrested). Notification is also only required where the individual is normally resident in Scotland, so this will not occur where for example a holiday-maker or other visitor commits an offence while in Scotland.

97. Subsection (2) sets out the two conditions that must be satisfied before notification is required. It is not enough for the court just to know that the offender was voluntarily under the influence of alcohol at the time the offence was committed; it must also be satisfied that this contributed to the offence being committed.

98. Subsection (3) sets out the details which the clerk of court must notify to the GP practice. This obligation only applies if the court is aware that the offender is registered with such a practice, so would not apply if the offender is not registered or if the offender does not disclose the information (unless the information is already known to the court by other means).

99. Subsection (4) defers notification until it is clear what the final sentence is (thus avoiding any need to revise the notification at a later date). If a conviction is overturned on appeal, then no notification is required, because following the determination of the appeal, the person will not be “convicted” in terms of subsection (1).

100. Subsection (5) defines a “GP practice”. The term includes GPs in other parts of the UK, so for instance an offender normally resident just north of the border with England but registered with a GP just south of that border would be covered by these provisions. Overseas practices are not included in the definition.

PART 3 – GENERAL

Section 33 - Ancillary provision

101. This section gives the Scottish Ministers power to make a range of additional provisions, by regulations, in connection with the Bill. This may include, for example, provision that is a direct consequence of changes made in the Bill, or other changes that are incidental to those changes. Transitional changes may be needed to “phase in” certain changes (e.g. to determine how the restrictions on advertising are to apply to advertisements already being displayed at the time the restrictions come into force). Regulations under this section may amend existing primary legislation (other than the Act resulting from the Bill, itself) and – if they do – are subject to the affirmative procedure (i.e. they would require approval by resolution of the Parliament). Regulations that don’t amend existing primary legislation are subject to the negative procedure (i.e. they are subject to annulment by resolution of the Parliament).

Section 34 - Commencement

102. The provisions listed in subsection (1) come into force on the day after Royal Assent. In particular, this includes most of the new powers conferred on Ministers to make regulations, where those regulations need to be in place at the time the main provisions come into force.
103. Otherwise, subsection (2) allows a maximum period of 12 months before the main provisions come into force, to allow those directly affected (e.g. licence-holders, Licensing Boards, the police and others) time to prepare. As the actual lead-times required may vary in different contexts, subsection (3) allows Ministers to bring specific provisions into force on different days (so long as none of the days specified is later than 12 months after Royal Assent).

**Schedule – Fixed penalty for advertising offences**

104. The schedule makes detailed provision about fixed penalty notices (FPNs) in connection with offences under Chapter 2 of Part 1 (i.e. offences in relation to advertising alcohol in the vicinity of a school etc., within certain licensed premises, or at a cultural or sporting event mainly involving or aimed at under-18s).

105. Paragraph 1 sets out who has the power to issue FPNs – that being a local authority authorised officer, or a police officer.

106. Paragraph 2 prescribes the content of the FPN, which must describe the circumstances of the alleged offence. It must also state the amount of the penalty, details of when and how it can be paid and the consequences of failing to do so (i.e. the risk of prosecution). The FPN must also provide contact details for a person to whom representations about it may be made. This is to allow the person to whom it is issued to challenge the FPN if, for example, he or she denies committing the offence or believes there were extenuating circumstances.

107. Paragraph 3 sets the amount of the fixed penalty as £200 and the period in which it must be paid as 29 days. The 29-day period allows a full four weeks to pay the FPN, not including the day on which the notice was issued. Both the amount and the period are variable by regulations under paragraphs 8 and 9 (see below).

108. Paragraph 4 allows the fixed penalty to be paid by means of a discounted amount if payment is made within the first 15 days of the 29-day period. The discounted amount is set as 75% of the amount of the fixed penalty (i.e. £150 while the fixed penalty is £200). Where day 15 falls on a non-working day, the period is extended to the next working day.

109. Under paragraph 5, the effect of paying a FPN is that no proceedings (i.e. prosecution) can be commenced within the 29-day period, nor may proceedings be commenced or continued after that period has ended if payment has been made during it. Prosecution is also prohibited where payment has been made late but accepted at a time when no proceedings have yet begun.

110. Paragraph 6 provides for the withdrawal of a FPN prior to commencement of proceedings where the local authority (sub-paragraph (1)) or a police officer (sub-paragraph (2)) considers that it ought not to have been given – including on the basis of representations made by the person to whom the FPN was issued. Where a withdrawal notice is issued by a police officer, a copy must be given to the appropriate local authority.

111. Paragraph 7 requires the repayment of any fixed-penalty amount (or discounted amount) that has been paid if the FPN is withdrawn under paragraph 6 or if proceedings for the offence
have been commenced (e.g. because the payment made was made after the 29-day period had expired).

112. Paragraph 8 requires the Scottish Ministers to review annually the fixed penalty amount to determine whether that amount should be changed to reflect the value of money – and, if so, to modify the amount by regulations (which – under paragraph 9(3) – are subject to the negative procedure).

113. Paragraph 9(1) allows the Scottish Ministers to make regulations about how a FPN can be paid. Paragraph 9(2) allows them to vary the 29-day period for payment of the fixed penalty, and the 15-day period for payment of the discounted amount in line with those typically used in other fixed penalty schemes. Any such regulations are subject to the negative procedure – that is, they are subject (within 40 days) to annulment by resolution of the Parliament.
FINANCIAL MEMORANDUM

INTRODUCTION

1. This Financial Memorandum has been prepared by the Non-Government Bills Unit on behalf of Richard Simpson MSP, the member who introduced the Bill, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The cost of alcohol misuse in Scotland impacts substantially on a wide range of sectors, including the health service, criminal justice, communities, employment, and the wider Scottish economy. In 2007, a Scottish Government publication\(^1\) estimated costs to the health service at £267 million; to social care at £230 million; as a result of crime at £727 million; to the productive capacity of the social economy at £865 million, and wider social costs at £1,464 million, totalling an estimated £3,553 million (over £3.5 billion) for that year alone.

3. The Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill (“the Bill”) aims overall to promote public health and reduce alcohol-related offending. It contains measures that:
   - place restrictions on the retailing and advertising of alcoholic drinks;
   - make changes to licensing laws;
   - place obligations on the Scottish Ministers to publish, review and report on its alcohol education policy; and
   - direct certain people whose offending or anti-social behaviour is attributable to alcohol consumption towards treatment or restrictions on that consumption.

4. This Financial Memorandum sets out the estimated costs and savings associated with the Bill under the following headings:
   - Minimum price of packages containing more than one alcoholic product (section 1);
   - Alcoholic drinks containing caffeine (section 2);
   - Age discrimination: off-sales (section 3);
   - Container marking: off-sales (section 4);
   - Applications for, or to vary, premises licence: consultation and publicity (section 5);
   - Restrictions on advertising of alcohol (sections 6-13);
   - Alcohol education policy statements (section 14);
   - Drinking banning orders (sections 15-29);

---

These documents relate to the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill (SP Bill 65) as introduced in the Scottish Parliament on 1 April 2015

- Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty (section 30);
- Offences involving alcohol: notification of offender’s GP (section 31).

5. The substantive costs associated with each of these measures, and the information on which estimates of these costs are based, are outlined for each measure. Where possible, an indication has been given of the timescales within which costs and savings are likely to arise. If the Bill is passed towards the end of the current session, most of the provisions discussed below would come into force just over a year later (probably in the 2017-18 financial year.

PART 1 – LICENSING AND PUBLIC HEALTH

Minimum price of packages containing more than one alcoholic product (Chapter 1, section 1)

6. Section 1 of the Bill contains provisions to end the practice whereby licensed premises can sell larger multi-packs of alcohol at a lower price-per-litre than smaller multi-packs when a single can, bottle or other container of the same alcohol product is not sold in the same retail outlet. The purpose of these provisions is to close a loophole in provisions of the Licensing (Scotland) Act 2005 (“the 2005 Act”) inserted by the Alcohol etc. (Scotland) Act 2010 (“the 2010 Act”).

7. In estimating the financial impact of this measure, account has been taken of the Financial Memorandum to the Bill for the 2010 Act (and its reference to the Sheffield University modelling). However, in utilising figures from these sources, no attempt has been made to investigate the methodologies or data used in the studies referred to. While the conclusions reached attempt to place a figure on savings which might be achieved, they should nonetheless be regarded as speculative.

Impact on off-trade sales

8. The financial modelling assessing the impact of a ban on quantity discounts for off-sales premises, conducted by Sheffield University\(^1\), considered the impact of a ban on all price-based promotions in the off-trade but, due to data limitations, was unable to model the impact of the more limited measures legislated for in the 2010 Act. Accordingly, the financial impact suggested by the Sheffield University modelling was greater than the impact of the measures actually implemented in the 2010 Act.

9. The Sheffield University model estimated that a total ban on off-trade price-based promotions would result in a reduction in overall consumption of 3.1%. An NHS Health

---


These documents relate to the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill (SP Bill 65) as introduced in the Scottish Parliament on 1 April 2015

Scotland report\(^4\) evaluating the impact of the 2010 Act on off-trade alcohol sales in Scotland found that it was associated with a 2.6% decrease in per-adult alcohol sales in Scotland. The largest decrease was in sales of pre-mixed alcohol beverages (ready to drink beverages (RTDs)), which decreased by 8.5%, although these account for a very small proportion of the off-trade market. Sales of wine decreased by 4.0% after the introduction of the 2010 Act. There was little evidence to suggest that the 2010 Act was associated with any changes in off-trade beer or cider/perry sales in Scotland. As the aim of this provision is to close a loophole in the 2010 Act, it has the potential to achieve the remainder of the overall reduction suggested by the Sheffield model – ie to close the gap between the 2.6% reduction already achieved and the 3.1% that was forecast. Again, however, it is recognised that these savings are speculative given the range of variables involved and the limitations of the methodology.

**Costs on the Scottish Administration**

10. The Monitoring and Evaluation of Scotland’s Alcohol Strategy (MESAS) portfolio of studies is undertaken by NHS Health Scotland and has been designed to measure the effectiveness of the Scottish Government’s alcohol policies. It is understood that the MESAS evaluation process will end in 2016. However, NHS Health Scotland will continue to analyse and publish alcohol sales and price data and it is not expected that the “multi-pack discount ban” provisions in the Bill will result in any additional costs for the Scottish Administration.

**Costs on local authorities**

11. The 2010 Act placed the responsibility for enforcing the discounting ban on local authorities and specifically upon Licensing Standards Officers (LSOs). The Financial Memorandum to the 2010 Act commented on the costs to local authorities of the discount ban in the following terms:

   “LSOs ensure compliance with any conditions attached to premises licences. The Licensing (Scotland) Act 2005 and associated secondary legislation sets out a number of conditions that are attached to a premises licence including such conditions covering an operating plan, premises manager, staff training, pricing and promotion of alcohol, payment of fees, display of notices, and alcohol display areas. A discount ban would be added to this number. Since the additional number of new conditions is small in relation to the number already being checked, and are not considered onerous compared to some of the other conditions, the additional work is considered to be small in relation to the overall work of the LSOs and, as such, costs are likely to be marginal.”\(^5\)

12. Given that the provisions in this Bill are more limited than those contained in the 2010 Act, any additional costs to local authorities as a consequence of these provisions are also anticipated to be marginal. While it is recognised that there may be some additional costs to local authorities in terms of enforcement and changes to licence conditions, these should be minimal and absorbed within existing budgets.

---


\(^5\) Alcohol etc. (Scotland) Bill [As Amended at Stage 2]. (2010) Revised Financial Memorandum, p.5-6. Available at: [http://www.scottish.parliament.uk/S3_Bills/Alcohol%20etc.%20(Scotland)%20Bill/b34as3-stage2-fm.pdf](http://www.scottish.parliament.uk/S3_Bills/Alcohol%20etc.%20(Scotland)%20Bill/b34as3-stage2-fm.pdf)
Costs on other bodies, individuals or businesses

Businesses

13. Alcohol producers, distributors and retailers are likely to experience a reduction in sales, although this may be at least be partially offset (for retailers in particular) by higher per-unit prices for larger multi-packs. Given the degree of uncertainty about the extent to which sales will be affected, it has not been possible to forecast what the overall implications for these businesses might be.

Individuals

14. Similarly, whether there will be savings for individuals who currently purchase alcohol in large quantities will depend on how they respond to these changes in pricing structure. Some will be motivated to purchase less (and so save money), while others may buy the same quantity at higher per-unit prices (thus incurring greater cost).

NHS Scotland

15. In terms of the estimated effect of a total off-trade discount ban, the Scottish adaptation of the Sheffield University modelling estimated that there would be savings to NHS Scotland of £3.8 million in the first year, then £10.8 million per annum by year ten. Based on the proportions of 2.6% to 3.1% already outlined, it could be argued that this suggests potential savings attributable to this Bill of around £0.61 million in the first year and £1.74 million by year ten (bearing in mind the notes of caution regarding the potential margins of uncertainty set out above).

UK Government

16. The potential for this measure to reduce overall alcohol consumption by a further 0.5% (referred to above) has corresponding implications for the UK Government in relation to a likely reduction in excise duty and VAT revenue to the Treasury. The Scottish Government has estimated that Scottish alcohol consumption accounted for around £800 million of UK excise duty revenue each year (in the period 2005/6 to 2009/10).6 This suggests a potential annual loss of revenue to the Treasury of up to £4 million (although this is, for the reasons already noted, a speculative figure). It has not been possible to establish figures for the proportion of VAT revenues attributable to Scottish alcohol sales, but the total loss of revenue to the Treasury attributable to an overall reduction in Scottish alcohol consumption would clearly include lower VAT receipts as well as reduced receipts from excise duty.7

---


7 In general terms, total tax accounts for around two-thirds of the average retail price of a bottle of spirits or wine, with three-quarters of the tax consisting of duty, and one-quarter VAT. For beer and cider, total tax accounts for around one-third of the retail price, divided roughly equally between duty and VAT. Source: HMRC Alcohol Factsheet (October 2013), available from https://www.uktradeinfo.com/Statistics/Pages/TaxAndDutyBulletins.aspx:
Alcoholic drinks containing caffeine (Section 2)

17. Section 2 prevents the sale to consumers of pre-packaged alcoholic drinks with a caffeine content in excess of a level to be determined by the Scottish Ministers in regulations. A new mandatory condition on premises licences and occasional licences (covering, in each case, both on-sales and off-sales) is created by the Bill. The condition will also apply to drinks or drinks ingredients which are sold un-mixed in a package which comprises a single product for a single price and which, when combined, would produce an alcoholic drink with a caffeine content greater than the level determined by the Scottish Ministers.

18. There is a view that the consumption of caffeinated alcoholic drinks can lead to risk-taking and anti-social or violent behaviours; various research studies support this view.\(^8\) It might therefore be anticipated that financial savings to police, justice, prisons and health budgets will be realised as a result of removing such drinks from sale. The scale of any potential savings is not easy to gauge, since it is difficult to distinguish between the effects of the combination of alcohol and caffeine and cultural attitudes towards violence, and the over-consumption of alcohol in general. Some figures are provided below in an attempt to illustrate what the potential savings might be.

Costs on the Scottish Administration

19. There are no direct costs anticipated on the Scottish Administration.

Costs on local authorities

20. Licensing Boards will be required to inform all licence-holders in their areas. This should involve a very minor administrative cost.

Costs on other bodies, individuals and businesses

Alcohol manufacturers, distributors etc.

21. Businesses that manufacture, distribute and sell alcoholic products that currently contain more than the permitted level of caffeine per litre will see a decline in revenue unless the product is reformulated. Most of these costs (where they arise) will fall to manufacturers. Sales of this type of drink account for a very small percentage of all alcohol sales in Scotland and it is therefore anticipated that distributors and retailers will not see a significant impact on revenues.

Criminal justice organisations

22. A study for the Scottish Prison Service (SPS) found that 43.4% of those questioned who admitted drinking prior to committing their current offence had consumed a well-known brand of

---

(caffeinated) tonic wine, despite this drink accounting for less than 1% of total alcohol sales nationally.\textsuperscript{9} A BBC Scotland investigation\textsuperscript{10} found that the same beverage was mentioned in 5,638 crime reports in Strathclyde from 2006-2009, equating to three per day on average. One in ten of those offences was violent and the bottle was used as a weapon 114 times in that period. While these figures reveal the popularity of tonic wine among certain offenders, they do not tell us how many cases, in an average year, are prosecuted for crimes involving caffeinated alcohol, nor how many of those result in a custodial sentence.

23. Audit Scotland estimated the average cost of processing a summary case through the courts at £2,148 based on 2009/10 figures. Summary cases generally deal with less serious crimes, such as theft and breach of the peace. More serious or violent crimes, such as serious assault and murder, are dealt with through solemn procedure (on indictment, before a jury) and involve much higher court costs.

24. If restrictions on the sale of caffeinated alcoholic products led (as anticipated) to a reduction in serious offending, and a corresponding reduction in custodial sentences, this could result in savings (on an ongoing basis) to the police, courts and SPS. Audit Scotland estimated the average cost of a prisoner place for a year at £34,279 based on 2009/10 figures.

\textit{NHS Scotland}

25. The misuse of alcohol in general is known to have an impact on NHS budgets through harm from over-consumption and also incidents involving violence or accidental injury. In 2012/13, there were 35,926 alcohol-related discharges from a general acute hospital in Scotland.\textsuperscript{11} While it is not possible to determine what proportion of these cases involve a combination of alcohol with caffeine, it can be predicted that withdrawal of such products from sale would contribute to a reduction in risk-taking and violent behaviour and reduce, in some cases, the length of time spent drinking and consequent overall consumption. This would, in turn, reduce the number of cases requiring treatment by the NHS, yielding ongoing long-term savings to NHS budgets.

\textbf{Age discrimination: off-sales (section 3)}

26. The purpose of section 3 is to prevent either the Scottish Ministers or Licensing Boards from imposing any age-related licence conditions on a premises licence (whether it is a new licence, a temporary licence or a variation to an existing licence).

\textbf{Costs on the Scottish Administration}

27. The Scottish Government will have responsibility for ensuring that Licensing Boards are informed that the ability to impose licence conditions which require the licensee to discriminate


\textsuperscript{10} BBC news. (2010) Available at: http://news.bbc.co.uk/1/hi/scotland/8464359.stm

against adult customers on age-related grounds is no longer available. This is likely to involve a very minor administrative cost (in the first year only).

**Costs on local authorities**

28. It is not anticipated that there will be any costs on local authorities.

**Costs on other bodies, individuals and businesses**

29. It is not anticipated that there will be any costs on other bodies, individuals or businesses.

**Container marking: off-sales (section 4)**

30. Section 4 gives Licensing Boards powers to vary the conditions of premises licences for off-sales premises to include a requirement to participate in an alcohol container marking scheme.

31. Section 27A of the 2005 Act enables Licensing Boards to vary premises licence conditions, but only in relation to matters prescribed by the Scottish Ministers in regulations. To date, the Scottish Ministers have not prescribed any such matters and, as a result, there is currently no mechanism for Licensing Boards to vary premises licences to require participation in container marking schemes. The Bill amends the 2005 Act by inserting a new section 27B, which enables Licensing Boards, if requested to do so by the police, to impose a “container marking condition” on some or all off-sales premises in the Board’s area.

**Costs on the Scottish Administration**

32. It is not anticipated that there will be any direct costs on the Scottish Administration.

**Costs on local authorities**

33. Costs on local authorities (Licensing Boards) are likely to include:
   - Purchasing and distributing the equipment required to implement the container marking requirement (such as stickers or UV pens);
   - Liaising with the police on written requests by the police to vary licence conditions (before and after issue);
   - Liaising with police on revoking container marking conditions.

34. The Bill does not prescribe how the schemes should operate. Equipment costs will depend on the type of equipment used and the scale of any scheme, so is difficult to estimate. While it is not possible to estimate liaison costs, these are likely to be minimal and absorbed in normal running costs for local authorities (and the police). It has not been possible to obtain information about these costs from previous or existing container marking schemes.
35. Any costs which are incurred are likely to fall to be dealt with under the existing funding arrangements. Under the 2005 Act, the administration of the licensing system is to be funded by the income from application fees. Regulation 13 of the Licensing (Fees) (Scotland) Regulations 2007 (SSI 2007/553) requires local authorities, in determining the level of those fees, to aim to match fee income to their total costs in fulfilling their functions under the 2005 Act. Those total costs would include their costs in running container marking schemes, so they would be expected to increase fees to cover the additional costs, provided they do not then exceed the prescribed maximum fees. The majority\footnote{29 of the 32 Scottish local authorities were charging the maximum prescribed annual fee for a premises licence at 3 March 2015. The maximum prescribed fee ranges from £180 to £900, depending on the category of premises.} of local authorities are currently charging the maximum prescribed annual premises licence fee, the amount of which has not altered since 2007. One solution might be for the Scottish Ministers to increase the prescribed maximum fee to allow local authorities to recoup the costs of additional licensing requirements such as a container marking condition and other measures. Increasing the prescribed maximum would impact on licence holders, rather than local authorities or the police.

Costs on other bodies, individuals and businesses

Police Scotland

36. It is anticipated that there will be some resourcing issues for Police Scotland, such as liaising with Licensing Boards on written requests to vary premises licences to include a container marking condition, checking containers found or confiscated and in the event of any alcohol confiscated or discarded from a minor being traced back to a retailer. As indicated above, it is anticipated that these costs would be minimal and absorbed within existing resources.

Businesses

37. Depending on the type, scale and scope of the schemes chosen, there are likely to be minor financial implications for retailers involved in the schemes in terms of staff time marking appropriate containers. Additionally, licensees may be subject to increased annual licence fees in the event that the Scottish Ministers revise the maximum fee levels.

Applications for, or to vary, premises licence: consultation and publicity (section 5)

38. At present, when a Licensing Board receives an application for a premises licence, or an application to vary such a licence, it must consult people who occupy land immediately adjacent to the premises in question (ie within four metres) and (separately) any community council whose area includes those premises. Section 5 provides that, in a situation where there is no community council in the relevant area, or where any such council is inactive, the Board must consult local residents within a much larger area – namely, anyone occupying land within 50 metres of the relevant premises.

39. The Bill also extends the periods for which notices about the applications must be displayed, and within which representations or objections may be made, in both cases from 21 days to 42 days. This is partly to ensure that, where there is an active community council, it has time to consult locally before reaching its own considered view.
Costs on the Scottish Administration

40. It is not anticipated that there will be any direct costs on the Scottish Administration.

Costs on local authorities

41. The extension of the period for which notices must be displayed will not involve any significant extra cost. The extension of the area in which consultation must take place (in cases where there is no active community council) will involve some additional cost in identifying a larger number of occupiers and serving each of them with a notice. This is liable, in turn, to generate a greater volume of comments on the application.

42. Determining how many premises licences might arise in areas lacking an active community council is not easy to do with any degree of accuracy. The Scottish Government found that “there was provision for 1,370 community councils across Scotland, of which 1,148 (84%) were active”\(^\text{13}\). Since community councils vary in size and population, it is not possible to say for sure whether this equates to 84% of the geographical area of Scotland. Nor is it possible to deduce that it equates to 84% of the population. However, this memorandum is based on a working assumption that 84% of licence applications will fall in areas where there is an active community council (and, therefore, that 16% will fall in areas where there is no active community council).

43. Scottish Government statistics show that, during 2012-13, 391 new applications for premises licences were received.\(^\text{14}\) For the purposes of this memorandum, it is assumed that approximately 400 applications will be received in any given year and that 16% of these – approximately 64 – will occur in an area where there is no active community council. If these were spread evenly geographically, then each of the 32 licensing board areas would have two applications per year which required them to consult over the wider 50 metre radius.

44. The same obligations apply to variations of licences under section 29 of the 2005 Act, except for “minor variations”. There are no central records kept of the number of applications to vary existing licences.

45. The Non-Government Bills Unit sought information from individual licensing boards on the numbers of applications for licence variations received each year, but only Perth and Kinross Council responded with the information sought. It receives 121 applications to vary premises licences in an average year, with 98 of these being for minor variations, leaving 23 to which the notification requirements apply. Perth and Kinross Council serves a population of approximately 148,000 while the average population served by a Scottish local authority is approximately 166,000.\(^\text{15}\) Factoring in this population discrepancy, this suggests that an average of around 135 applications to vary premises licences will be made each year in each licensing board area and that approximately 100 of those will be for minor variations. That leaves around 35 applications


that would be subject to the new provision. Of these, 16% – or approximately six per local authority – would be likely to fall in an area without an active community council.

46. Taking premises licence applications and applications for licence variations together, it is estimated that each Licensing Board, in an average year, will be responsible for dealing with approximately eight applications that will trigger the new provisions and incur the costs of identifying and consulting with an expanded number of premises in the local area and handling the resulting responses.

47. If it is assumed that an average licensed premises occupies a space 10 metres squared (10m x 10m) then the expanded consultation area would cover approximately 9,850m$^2$ compared with 210m$^2$ for the requirements under the existing Act.\textsuperscript{16} Such an expanded consultation area might at least touch (i.e. include in part) as many properties of the same size (10m x 10m) as would be wholly enclosed in an area that extended out by an additional 10m. This larger area would cover 13,700m$^2$ (compared with 1,175m$^2$ under the existing Act) and could contain up to 137 other premises (compared with a maximum of 23) in a built-up area – a difference of over 100. However, taking into account rural areas (where there may be few if any other premises in the vicinity of licensed premises), it is estimated that the new consultation requirement would involve an overall average of 50 additional properties in each case.

48. It is estimated that it would take an average of one week of staff time of middle manager grade to identify these additional properties, notify them and process any representations arising as a result. This would cost a total of approximately £700\textsuperscript{17} in salary and stationery costs. Applying this figure to the average of eight applications per licensing board area gives an estimated total cost of the provision of £5,600 per Licensing Board, or around £180,000 per annum across Scotland.

**Costs on other bodies, individuals and businesses**

**Applicants for licences**

49. Additional consultation by a Licensing Board would not directly increase the cost to the applicant. However, should the fees payable for an application for, or to vary, a premises licence be increased to offset some or all of the Board’s additional costs (as outlined above), then a proportion of the £180,000 additional annual cost would be transferred to applicants instead.

**Restrictions on advertising of alcohol (Chapter 2 – sections 6 to 13)**

50. Sections 6 to 13 contain provisions which place restrictions on the advertising of alcoholic drinks and set out the places and premises where restrictions will apply, particularly in contexts where they are likely to be seen by children.

\textsuperscript{16} The area consists of four rectangles 10m x D on each side of the square that represents the licensed premises, plus four quadrants that together make up a circle of radius D (where D = the required distance from the boundary of the premises, i.e. 4m at present and 50m under the Bill). The total area (A) is therefore $4 \times 10D + \pi D^2$.

\textsuperscript{17} Based on seven days’ work carried out by a member of staff of administrative grade plus stationery and any other necessary materials.
51. The specific restrictions are on displaying advertisements within 200m of a school, nursery, crèche or play area; advertising within retail premises (other than the part of those premises that have an off-sales licence); and advertising at sporting and cultural events that mainly involve, or are aimed at, children. Breach of these restrictions is an offence, punishable either by a fine or by a fixed penalty.

**Costs on the Scottish Administration**

**Scottish Government**

52. There are no direct obligations placed on the Scottish Government, other than an obligation to review the amount of the fixed penalty on an annual basis and uprate it by regulations if appropriate (which will incur only a negligible administrative cost on each occasion). In addition, paragraph 9 of the schedule gives the Scottish Ministers the power by regulations to adjust certain aspects of the fixed penalty regime; while there is no requirement to do so, any exercise of this power would incur some cost in staff time. This is likely to be a minimal cost that could be absorbed within existing budgets.

**Scottish Court Service and Crown Office and Procurator Fiscal Service**

53. There are potential cost implications for the Scottish Court Service (SCS) and the Crown Office and Procurator Fiscal Service (COPFS), in relation to any prosecutions for breach of these restrictions. Any costs are expected to be minimal, however, as it is envisaged that most people will comply with the restrictions, and the vast majority of breaches will be penalised by fixed penalty notice. The SCS did not identify any cost implications in its response to the member’s consultation.

**Costs on local authorities**

54. There are no changes introduced to Licensing Boards’ responsibilities in considering licence applications, although there may be some indirect implications. For example, Licensing Boards may wish to impose stricter conditions in future when approving occasional licences for sporting or cultural events.

55. Payment of fixed penalties imposed under the schedule will be made to the local authority in the area where the offence is alleged to have been committed. Local authorities will be responsible for management of the payment process and will record payments as part of their general revenue within their accounts. It will be for a local authority to determine in which area of its responsibilities any revenue generated from the payment of penalties will be spent. Practice by local authorities in relation to enforcement and the processing of penalties under the smoking ban appears to be that revenue generated is credited to the environmental health budget.

56. To avoid conflicts of interest, a local authority may not be issued with a fixed penalty notice. If it is found to have committed an offence, it will be subject to prosecution.

57. There may be some costs to local authorities in relation to undertaking familiarisation and training for officers in the new restrictions, and in implementing the fixed penalty regime. But,
as local authorities are well used to applying statutory restrictions and operating fixed penalty regimes in other areas of legislation, the costs are expected to be minimal.

Costs on other bodies, individuals and businesses

Police Scotland

58. As with local authorities, there may be some costs to the police in terms of updating systems and any relevant training required for officers. However, Police Scotland is used to adapting to changes in the criminal law, and officers are familiar with operating fixed penalty regimes in other areas of legislation, so costs are expected to be minimal.

Individuals

59. The person who commits an offence may, for example, be the owner of premises on which an alcohol advertisement is displayed within 200 metres of a school or nursery; the licensee of a licensed premises; or the organiser of a sporting or cultural event. Such a person would face costs ranging from £150 (on payment of the penalty within 15 days) to £5,000 (the maximum fine, at level 5 on the standard scale), on summary conviction.

Businesses

60. There may be some loss of business, and hence of revenue, to individuals and businesses in the advertising industry (including those who own or manage advertising spaces such as billboards, although it can reasonably be assumed that they could simply lease the advertising space to a company wishing to advertise something other than alcohol).

61. Alcoholic drinks producers and retailers may also see some reduction in revenue as an indirect consequence of their reduced ability to advertise their products and services. However, in 2004, the Institute of Alcohol Studies acknowledged that some scientific studies had shown that “the effect of advertising on consumption is weak”, which is why “alcohol producers and advertisers can argue that advertising has no influence on overall consumption”\(^{18}\). The aim of these provisions is not to reduce (current, adult) consumption of alcohol but to reduce children’s exposure to imagery that promotes and normalises alcohol consumption. The impact of these measures on levels of alcohol sales is therefore expected to be felt only over a longer timescale.

Alcohol education policy statements (Chapter 3 - section 14)

62. Section 14 places a duty on the Scottish Ministers to lay before the Parliament and publish a statement of their policy on the provision of public information and education about the consumption of alcohol. The first such statement must be laid and published within 12 months of Royal Assent. Thereafter, statements must be published no later than five years after the date of the publication of the preceding statement.

63. The provisions also require the Scottish Ministers to review the effectiveness of the policy and its implementation and to produce a report, to be laid before the Parliament, at least six months prior to the deadline for publishing the next statement.

**Costs on the Scottish Administration**

64. Costs to be borne by the Scottish Government will involve staff time in developing and delivering the policy and then in gathering and collating the information to be contained in the review reports.

65. There is a range of activity taking place within the Scottish Government to monitor and evaluate the success of social marketing campaigns, while education which is delivered in schools is subject to inspections by Education Scotland.

66. It is anticipated that the activity involved in compiling information for the review report and the inconsequential costs of online publication of the statements will replace the work already being done by the Scottish Government’s public health division and will not, therefore, place any additional burden on its budget. The minimal extra expense involved in online publication will realise the significant benefits of having a single, coherent, overall policy and an accompanying evaluation, with clear lines of accountability to the Minister.

**Costs on local authorities**

67. There are no anticipated costs on local authorities.

**Costs on other bodies, individuals and businesses**

68. There are no anticipated costs on other bodies, individuals or businesses.

**PART 2 – OFFENCES ETC. INVOLVING ALCOHOL**

**Drinking banning orders (Chapter 1 - sections 15 to 29)**

69. Sections 15 to 29 relate to the introduction of drinking banning orders (DBOs), which are civil orders similar to anti-social behaviour orders (ASBOs) and are designed to protect the community from a specific range of behaviour associated with an individual’s alcohol misuse.

**Estimating the number of drinking banning orders**

70. In attempting to provide an estimate of the likely costs to the various bodies responsible for enforcing the Bill (ie local authorities, the police, SCS and the COPFS) it is first necessary to estimate the number of DBOs which are likely to arise as a result of the new legislation.
71. Between September 2009 and December 2011\(^{19}\), 625 DBOs were issued in England and Wales, equating to approximately 270 per annum\(^{20}\). Based on the population of Scotland compared to that of England and Wales and, taking into account Scotland’s higher alcohol consumption rate\(^{21}\), this would suggest that approximately 30 DBOs per year would be issued in Scotland. The data from England and Wales does not indicate the likely proportions of DBOs on application and DBOs on conviction. The former will involve greater costs since relevant authorities will need to prepare and defend a case and pay a fee to the court, while DBOs on conviction will simply involve an additional disposal at the end of a trial that is taking place in any event.

72. Correspondence with the SCS (based on its analysis of ASBOs) suggests that the number of DBOs on conviction would be five\(^{22}\). This figure was based on an assumption that DBOs are similar to ASBOs and an expected annual total of 30 DBOs (as set out above). This means that the anticipated number of DBOs on application would be in the region of 25.

**Costs on the Scottish Administration**

**Scottish Government**

73. The Scottish Government is given a number of powers and responsibilities within section 27, including to consider applications for approved courses, to regulate the approval process and to issue guidance on the conduct of those courses. More generally, it is anticipated that the Scottish Ministers will wish to produce guidance on the new legislation to assist the courts, the police, COPFS and local authorities.

74. These responsibilities are likely to involve the equivalent in staff resources of one full-time senior policy officer, which is likely to come to approximately £54,000 per annum, based on a manager-grade (C1) civil service annual salary as at January 2015. This level of expenditure is only likely to be necessary in the first year or so; in the longer term, the costs should be significantly lower.

75. It is anticipated that, in common with drink driving courses in England and Wales, course providers will recoup their costs through charging fees to those attending. The Scottish Administration will not, therefore, have to provide funding for the approved courses.

**Scottish Court Service**

76. SCS will be required to train staff in new procedures and devise or adjust IT systems to deal with the new order.

---


\(^{20}\) Home Office statistics quoted in response to FOI request 22894 28 June 2012.


\(^{22}\) Scottish Court Service. Memorandum to the Non-Government Bills Unit. January 2015.
77. DBOs which are made on conviction will involve marginal court costs, since the evidence presented in court during the proceedings for the offence will provide the basis for the court’s decision. SCS anticipates that there would be around five criminal orders made per year and that costs associated with this level of business would be minimal and could be absorbed by existing resources.\(^{23}\)

78. DBOs on application will involve a greater level of resource in terms of court programming and judicial time, particularly if the order is defended. Based on NGBU’s estimate that approximately 30 DBOs could be issued per year in total (and a small proportion of these will be on conviction, as set out above), the SCS has estimated that DBOs would cost up to £5,000 per annum in terms of staff costs and resources. As this cost is likely to be spread across the SCS estate it is likely that it could be accommodated within existing budgets.

79. Costs involved in amending the SCS civil case management system as a result of the introduction of this order are expected to be minimal. The criminal IT system currently used by the courts would need to be updated to take account of the introduction of this new type of order. This would be a one-off cost which SCS estimates to be around £1,000.\(^{24}\)

80. A number of appeal provisions are made in section 25. Any appeals will place a call on court resources. Records of these types of appeals in England and Wales are not available but it is expected that the number of appeals will be low and that costs will therefore be at a level that can be absorbed within existing budgets.

**Scottish Legal Aid Board**

81. As set out in earlier paragraphs, it is anticipated that the number of DBOs made on conviction will be small – in the region of five each year. Audit Scotland reported that the average cost of criminal legal aid was £642\(^{25}\) for a summary criminal case in 2010. Only a small proportion of a person’s legally-aided representation will relate to the consideration, post-conviction, of whether to issue a DBO and not all defendants will be eligible for legal aid. (Some defendants will have been tried on indictment, in which case their legal aid costs are likely to be higher; but there is no reason to suppose that this will affect the additional cost involved in relation to DBO proceedings post-conviction.) On this basis, it is assumed that any additional impact on the Scottish legal aid budget will be minimal.

82. DBOs made on application will potentially have a greater impact on the legal aid budget where these are defended by the recipient. The Scottish Legal Aid Board indicated that average case costs for providing civil legal aid for ASBOs vary from year to year, with the average over the past three years being approximately £480.\(^{26}\) The predicted annual average number (25) of DBOs on application includes only those where the DBO is made; as some will be successfully defended, the total number of DBO applications is likely to be greater than 25. On the other hand, not all of the subjects of these cases will be eligible for legal aid.

---

\(^{23}\) Scottish Court Service. Memorandum to the Non-Government Bills Unit. January 2015.

\(^{24}\) Scottish Court Service. Memorandum to the Non-Government Bills Unit. January 2015. SCS indicated that costs in relation to breaches of DBOs would be dependent on the procedure decided upon.


\(^{26}\) Scottish Legal Aid Board. Email to the Non-Government Bills Unit. March 2015.
**Crown Office and Procurator Fiscal Service**

83. COPFS will incur minor additional costs in relation to criminal trials for offences involving alcohol, where the offender is convicted. Prosecutors will need to be prepared to make submissions about the possible terms of a DBO and, in some cases, to lead evidence. The additional costs involved are likely to be minimal. Further costs will arise if COPFS appeals against a decision not to make a DBO, applies later for variation of a DBO, or contests an application by the subject to vary or revoke the DBO.

84. COPFS will also have a role to play if any DBOs are breached, in deciding whether to prosecute, and then (if so) in preparing and presenting the case. COPFS stated, in an email to the Non-Government Bills Unit, that “we don’t record the associated costs per case”.27

85. A Post-Legislative Assessment of the Violent Crime Reduction Act 200628 cited anecdotal evidence from England and Wales that early recipients of DBOs abided by the terms of the order and did not attempt to enter premises from which they were banned and refrained from unacceptable behaviour in public. On this basis, it is anticipated that the rate of breaches of DBOs in Scotland will also be low. Given the likely low incidence of breaches, it is anticipated that costs to the COPFS will be minimal and therefore manageable within current budget levels.

**Costs on local authorities**

86. The cost to local authorities of applying for a civil DBO will involve the administrative costs in gathering evidence and putting a case together, and an application fee to the court. For comparison, the City of Edinburgh Council estimated that it costs in the region of £1,000 to bring an undefended ASBO action, but costs can rise to £3,000-4,000 if the application is defended.29

87. If the costs for DBOs are similar, and the cost range to a local authority of a DBO application is from £1,000 to £4,000 per case and, if approximately 30 DBOs are applied for per annum, then it could cost local authorities throughout Scotland between £30,000 and £120,000 per year. Of course, some of these DBOs could be applied for by the police so this is a maximum possible figure. A more realistic mid-range figure would be £60,000.

**Costs on other bodies, individuals and businesses**

**Police Scotland**

88. In order to gauge the likely costs to the police of applying for a DBO, the Non-Government Bills Unit sought information from Police Scotland on the costs of dealing with Football Banning Orders, since it is likely to provide a useful comparator.

---

29 City of Edinburgh Council. Email to the Non-Government Bills Unit. March 2015.
89. However, Police Scotland said that it could not estimate its administration costs for preparing such an application, as they formed part of the overall budget for employing solicitors within the Legal Services Department, and this budget could not be broken down according to particular categories of work.  

90. Where it is the police, rather than a local authority, that applies for a DBO, the costs are likely to be similar. The maximum of £120,000 per year, and the likely mid-range cost of £60,000, referred to above should therefore be viewed as total amounts for local authorities and the police, taken together.

91. Police Scotland will be involved in dealing with enforcement of orders issued both on conviction and on application, but the costs involved are expected to be offset by the preventative effect of the order.

**Individuals**

92. Individuals who decide to defend an application for a DBO against them will incur court costs, unless they qualify for legal aid. Those individuals who have been served a DBO and are willing to attend an approved course will bear the costs of attending such a course. In England and Wales the suggested fee for an individual to attend an “approved course” was a minimum of £120 and a maximum of £250. It will be for the Scottish Ministers to determine the cost to an individual of attending an approved course.

**Other bodies**

93. It is expected that organisations that provide approved courses will be commercial organisations which will bear the costs of setting up and running the courses and then recover these costs through the fees paid by the individuals attending the courses.

94. Other commercial ventures on which there may be a financial impact are licensed premises that may lose trade from a banned drinker. On the other hand, the removal of problem drinkers from their premises could have a beneficial impact on trade.

95. It is anticipated that any potential demands on budgets for the implementation of DBOs would be offset by the long-term savings associated with a reduced incidence of alcohol-related criminal and anti-social behaviour.

**Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty (section 30)**

96. Section 30 relates to the introduction of an alcohol awareness training pilot scheme in an urban area as an alternative to a fixed penalty for an alcohol-related offence, and the roll-out of

---

30 Police Scotland. Memorandum to the Non-Government Bills Unit. February 2015.

such schemes across Scotland in the event of a positive evaluation of the pilot scheme. The scheme will be available to individuals arrested as a result of committing an alcohol-related public order offence – the fixed penalty notice served on such individuals will be revoked if they participate in alcohol awareness training.

97. As the detail of how the scheme would be rolled out and the designation of the area of the pilot will be matters for the Scottish Ministers, there is a large degree of uncertainty about the actual costs that would be incurred.

98. The figures provided are concerned with the cost of implementing one pilot scheme over a 12 month period and also attempt to quantify the costs which would arise if the scheme is rolled out throughout Scotland. However, the Bill does not specify how many, or on what geographical/area basis, rolled out schemes would be created (which will be a matter for the Scottish Ministers) so it is not possible to forecast with any degree of certainty how many such schemes would result as a consequence.

99. The estimated figures for the pilot scheme are based on the costs for the Fife pilot. The figures also reflect the trial period of 12 months, rather than the six month period for which the Fife pilot ran.

Pilot scheme

100. The costs for the six month pilot in Kirkcaldy were just under £9,000. It is therefore estimated that the cost of the pilot would be similar – around £18,000 for 12 months (covering staff costs, accommodation, supplies and services, and administration). The cost of evaluation of the scheme is estimated at £15,000.

Cost of roll-out of scheme throughout Scotland

101. As it will be for the Scottish Ministers to decide the basis on which the scheme would be rolled out throughout Scotland, the cost of and funding for such provision is uncertain. However, based on the mean annual figures for 2012-14 for the Fife scheme, it is estimated that the annual cost nationally might be in the region of £570,000 operating costs, with £87,000 one-off capital costs. These costs are based on the characteristics of Fife with 6.9% of the Scottish population (based on General Register Office of Scotland data) and do not take into account any regional variation. If co-ordination and administration of the scheme could be absorbed by existing staff then operating costs may be considerably lower.

---

32 Based on the estimated cost of the evaluation of the Fife pilot being £10,000. Sources: email from FASS, March 2015.

33 If the Fife model is used, funding for the rolled out schemes may come from Alcohol and Drugs Partnerships (ADPs), which are funded from the health budget (for alcohol misuse) and from the justice budget (for drug prevention). In Fife, ADP funding is disbursed by the Health Board. Partners that sit on the ADPs (such as health boards, local authorities, police) can also contribute funding from their own core budgets.

34 The average operating costs for Fife 2012-2014 are estimated at £39,000 per annum, which includes staff costs, travel, stationery, publicity etc. One-off capital costs were around £6,000. Source: email from FASS, March 2015.
Costs on the Scottish Administration

102. Depending on the source of funding for the scheme (see footnote 33), costs on the Scottish Government would include setting up the pilot and the cost of the evaluation (around £33,000).\textsuperscript{35}

103. The scheme allows attendees to avoid the fixed penalty notice (FPN), currently £40. Based on an average of 1,500 referral numbers from 2012-2014 in Fife, this may represent up to £60,000 in lost FPN income. On a population share basis this could be up to around £870,000 across the whole of Scotland. However, evidence from the Fife pilot is that 34% of people completed the course – so actual lost income, Scotland-wide, is more likely to be around £290,000.\textsuperscript{36} And, in the long run, there should be off-setting savings in the health and justice budgets, from a reduction in alcohol over-consumption.

Costs on local authorities

104. Depending on the overall source of funding for the schemes (see footnote 33) it is anticipated that some of the funding for the scheme may come from local authorities.

Costs on other bodies, individuals and businesses

Police Scotland

105. Depending on the overall source of funding for the schemes (see footnote 33), there may be resourcing issues for Police Scotland in terms of administration of the scheme, although it may be possible to absorb these within existing resources.

Health Boards

106. Similarly, depending on the overall source of funding for the schemes (see footnote 33), Health Boards may contribute and have a role in the disbursement of funding. It is also anticipated that there would be potential savings for the NHS over time in terms of a reduction in alcohol-related referrals.

Individuals

107. Individuals who attend the sessions will have a saving from payment of the FPN (£40) but may have to take time off work to attend the training course which may represent a loss of income.

Businesses

108. There may be some impact on businesses if employees take time off work to attend the awareness training courses, but this is likely to be minimal (and businesses are likely to benefit in the long term if employees successfully address their alcohol problems).

\textsuperscript{35} Based on the combined cost of the pilot and evaluation

\textsuperscript{36} In Fife, 2,947 referrals were made from April 2012 to June 2014, of whom 1004 attended and completed the course, an attendance rate of 34%. Source: e-mail from FASS, September 2014.
**Offences involving alcohol: notification of offender’s GP (section 31)**

109. Section 31 requires a court to notify the relevant GP practice when a person aged 16 or over and normally resident in Scotland is convicted of an offence where, in the opinion of a court, alcohol consumption was a contributory factor. While this would not place any obligation on GPs to take specific action, the aim is to alert them to a potential health issue and enable them to address this with the patient at an appropriate opportunity.

110. In terms of the notification itself, the court would be expected to provide the offender’s GP practice with a range of information. This would include the person’s name, the date of conviction, the offence of which the person was convicted, and the court’s view that alcohol consumption was a contributory factor.

111. It has proved difficult to provide any definitive costings for the notification scheme for a number of reasons, including the fact that there do not seem to be any obvious legislative parallels which might be used as a basis for costings. In terms of the areas which are likely to incur costs, these include:

- Time spent by the court, each time an offender is convicted, in deciding whether alcohol was a contributory factor.
- Notification of the GP practice (if known) in each case where the court’s view was that alcohol was a contributory factor, each such notification involving a small administrative cost to the SCS.
- The expectation is that GPs will spend longer speaking to at least some of these patients (about their alcohol consumption) than they would otherwise have done. However, this should be accommodated within GP practices’ normal working hours and so should not require the allocation of additional resources overall.

**Costs on the Scottish Administration**

112. The Scottish Court Service (SCS) will be required to issue notifications to GP practices, so there will be a cost accrued in administration and possible postage costs. The SCS has estimated this cost as £150,000 per annum.\(^3^7\)

113. This figure was based on the 105,549 individuals who were convicted of an offence in 2013/14, and data quoted in the member’s consultation document suggesting that 50% of those given a custodial sentence or on remand in a Scottish prison reported being under the influence of alcohol at the time of their offence (or alleged offence). It assumes that this percentage applies to all convictions, that 90% of offenders would provide the court with details of their GP, and hence that around 48,000 notifications per year will require to be issued.

114. SCS has also assumed that all offenders who provide the court with details of their GP do so at the relevant sentence hearing with no requirement for adjournment.

---

\(^{3^7}\) Scottish Court Service. Email to the Non-Government Bills Unit. January 2015
115. SCS has indicated that the £150,000 figure would be a minimum and does not include the costs of any additional information required in the notification. On the other hand, since the 50% figure referred to convicted offenders who were under the influence of alcohol at the time of their offence, it may be an over-estimate of the proportion of convictions which would meet the requirement in the Bill (i.e. that the alcohol consumption “contributed to” the commission of the offence).

116. SCS has also stated that its IT system for processing criminal proceedings would require to be updated, at an estimated (one-off) cost of around £10,000.  

**Costs on local authorities**

117. It is not anticipated that there will be any costs on local authorities.

**Costs on other bodies, individuals and businesses**

**NHS Scotland**

118. It is likely that some additional GP time will be taken up in discussing alcohol consumption with patients, but this is at the discretion of GPs and will be absorbed within existing working hours. These discussions may lead to additional referrals for treatment. However, it is difficult to estimate the cost of such treatments, as it is not known how many or what treatments would be offered or taken up. In addition, NHS Scotland does not compile cost data for specific treatments. However, the UK Alcohol Treatment Trial showed that, for every £1 spent on evidence-based treatment, the public sector saves £5. Therefore, while it is not possible to quantify what the cost of treatment may be, it is possible to say that it would more than likely be a net saving.

**Other individuals and businesses**

119. There are not any other anticipated costs associated with individuals and businesses.

---

38 Scottish Court Service. Email to the Non-Government Bills Unit. January 2015
### Summary table of costs

<table>
<thead>
<tr>
<th>Measure</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on others</th>
<th>Potential savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi-pack discounting (s.1)</td>
<td>Minimal</td>
<td>Minimal</td>
<td>Unquantified</td>
<td>£0.61M – £1.74M per annum</td>
</tr>
<tr>
<td>Caffeinated alcohol (s.2)</td>
<td>None</td>
<td>Minimal</td>
<td>Some, but unquantified</td>
<td>Significant, but unquantified</td>
</tr>
<tr>
<td>Age discrimination (s.3)</td>
<td>Minimal</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Container marking (s.4)</td>
<td>None</td>
<td>Some, but unquantified</td>
<td>Some, but unquantified</td>
<td>Some, but unquantified</td>
</tr>
<tr>
<td>Community involvement (s.5)</td>
<td>None</td>
<td>£180K per annum</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Restrictions on advertising (ss.6-13)</td>
<td>Minimal</td>
<td>Some, but unquantified</td>
<td>Minimal</td>
<td>Unquantified</td>
</tr>
<tr>
<td>Alcohol education policy statements (s.14)</td>
<td>Minimal</td>
<td>None</td>
<td>None</td>
<td>Unquantified</td>
</tr>
<tr>
<td>Drinking banning orders (ss. 15-29)</td>
<td>SG – £54K (first year or so only); SCS – £5K per annum and £1K as one-off; SLAB – some, but unquantified</td>
<td>£60K per annum (local authorities and/or police)</td>
<td>Some, but unquantified</td>
<td></td>
</tr>
<tr>
<td>Alcohol awareness training (s.30)</td>
<td>£33K for pilot; £290K annually in lost FPN income</td>
<td>£87K one-off costs for roll-out; up to £570K annually (health boards/local authorities/police)</td>
<td>Some, but unquantified</td>
<td></td>
</tr>
<tr>
<td>GP notification (s.31)</td>
<td>£150K per annum, plus one-off costs of £10K</td>
<td>None</td>
<td>Some, but unquantified</td>
<td>Some, but unquantified</td>
</tr>
<tr>
<td><strong>Totals (quantified costs only)</strong></td>
<td><strong>£98K start-up costs; £445K per annum</strong></td>
<td><strong>£87K start-up costs; up to £810K per annum</strong></td>
<td><strong>£0.61M – 1.74M per annum</strong></td>
<td></td>
</tr>
</tbody>
</table>

---

40 The potential loss of revenue to the UK Government (referred to in paragraph 16) has not been included in the table.
MEMBER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 1 April 2015, the member in charge of the Bill (Dr Richard Simpson MSP) made the following statement:

“In my view, the provisions of the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 1 April 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
ALCOHOL (LICENSING, PUBLIC HEALTH AND CRIMINAL JUSTICE) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)