Dear

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

I am writing in connection with a number of points made in the submissions to the Health and Sport Committee on my Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill, following the Committee’s call for written evidence at Stage 1. I believe that it would be helpful to the Committee to have clarification of these issues at this stage, particularly where the evidence submitted, in my view, is misleading or indeed incorrect.

Alcoholic drinks containing caffeine (section 2)
The Law Society of Scotland refers to Directive 98/34/EC (Technical Standards and Regulations Directive), which aims to prevent new technical barriers being created and says that the European Commission should be made aware of the provision.

I believe that this is incorrect, as there is no maximum limit for caffeine prescribed in the Bill and hence no prescribing of the required characteristics of a product. It would be the regulations under section 2(3) and (4), specifying the maximum limit, which would require notification at a later stage.

Container marking: off-sales (section 4)
The Law Society notes that a container-marking condition may be imposed only where an application has been made by the police [see section 27B(5)] and [at section 27B(6)] that if the Board doesn’t comply with the chief constable’s request, it must give written reasons to the chief constable. While accepting that normally it is good practice for Licensing Boards to be accountable for their decisions, the Society considers it to be “highly inappropriate for the police to be in a position to hold Licensing Boards to account in this manner.”

The reason for legislating on container marking is to enable it to be used in response to specific complaints about under-age drinking and associated anti-social behaviour. Such complaints are likely to be raised initially with the police, so I believe
it is reasonable for the police to take the initiative in seeking a container marking scheme, but also appropriate to leave the final decision with the Board. However, I would be open to re-consider the detail of this at Stage 2.

The Law Society goes on to comment that:

“Also, we note that the provision would allow the Board to vary conditions but does not specify how this would be done. Accordingly, each Board would require to devise a procedure as to how to impose a container marking condition.”

In fact, new section 27B(7) specifically applies in the container-marking context the existing procedural provisions that govern other variations of licence conditions (in existing section 27A), subject to a few express modifications.

Accordingly, the Law Society is incorrect when it says: “there is no mention of whether a premises licence holder is to be notified before the premises licence is varied in this way”. In fact, under the Bill, the premises licence holder must be notified (under section 27A(6)(b)(ii)) and must have an opportunity to comment (under section 27A(7) and (8)). This is all clearly explained in paragraph 28 of the Explanatory Notes.

**Ban on advertising near schools etc (section 6)**

The Law Society’s submission refers to the respective definitions of “advertisement” and “alcohol advertisement” as set out in section 6(3) of the Bill:

“Given this wide definition it would appear in our view that an offence would be committed … if a parent or guardian wears a football or rugby jersey with an alcohol sponsor when collecting children from school. This provision accordingly runs the risk of not just affecting persons with an interest in advertising but also, unknowingly, members of the public.”

This is incorrect, as the advertising ban only applies in a “prohibited place” which is defined as “any fixed place”, and so exempts anything which would otherwise constitute an alcohol advertisement but is not in a fixed place, as it is on a person’s clothing. This is further clarified by referring to the definitions in section 9(3) (on advertising at sporting/cultural events) which is purposely extended to include “an advertisement displayed on clothing”.

**Advertising within licensed premises (section 8)**

The Committee may wish to note that I am considering further the approach adopted in section 8 to the prohibition of alcohol advertisements in any part of retail premises other than the off-sales area – this is as a result of a number of respondents suggesting a degree of overlap with existing legislation.

**Drinking Banning Orders (specifically section 21)**

The Scottish Courts and Tribunals Service (SCTS) refers to the application of the Drinking Banning Order provision to on-sales premises only, with SCTS stating that:
“A drinking banning order will only apply where there is a premises licence authorising the sale of alcohol for consumption on the premises. In contrast, we refer to Section 1 of the Violent Crime Reduction Act 2006 applicable in England and Wales whereby a drinking banning order can be made by the Court prohibiting the subject from entering premises in respect of which there is a premises licence authorising the sale of alcohol by retail.”

It is not correct to say that drinking banning orders (DBOs) could apply only to on-sales premises. Section 15(2) is deliberately drafted in very broad terms (“A drink banning order may impose any prohibition on the subject which is necessary…”.) and would enable a DBO to prohibit a subject from entering off-licences.

It is true, however, that the Bill (at section 15(3)) requires the court to specifically consider imposing a prohibition on entering premises licensed for on-sales, and “must include such prohibition as the court making it [the DBO] considers necessary”. This is for the obvious reason that a problem drinker (i.e. someone whose alcohol consumption is associated with crime or antisocial behaviour) is much more likely to cause problems for others when drinking alcohol on licensed premises (such as a pub) than when purchasing it for later consumption at home.

Section 21(7) and (8) has elicited the following views from the Scottish Courts and Tribunals Service in relation to the requirement to state in open court where a DBO is not being made:

“Given the volume of cases that are committed whilst the offender was under the influence of alcohol, this will be a significant additional task for SCTS staff to complete. We would estimate that this will add an additional 2 minutes to each case. In 2013/14 105,549 individuals were convicted of an offence. On the assumption that 50% of those involved alcohol, this would equate to costs of £376k per annum. This cost was not included in the Financial Memorandum. Given the cost implications further consideration may wish to be given to this proposal.”

The intention behind these provisions is to require the court either to (i) make a DBO, or (ii) to explain its reasons for not doing so in open court only where it was already clear from the proceedings that the offender had been drinking. That is why section 21 only applies (see subsection (1)) where the offender was under the influence of alcohol. This should mean that, where the court doesn’t already know that the offender had been drinking, the question of either making a DBO or explaining why not shouldn’t arise. However, if this is considered not to be sufficiently clear at present, the wording could be refined at Stage 2. On that basis, implementing the provision should be much less expensive than the SCTS has suggested.

I would be grateful if you would bring these points to the attention of the Committee.

Yours sincerely