Duncan McNeil MSP
Convener, Health and Sport Committee
c/o Clerk to the Committee
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The Scottish Parliament
Edinburgh
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Dear

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

Now that the Health and Sport Committee’s Stage 1 evidence sessions in connection with my Bill have concluded, I would wish to thank the Committee for its thorough and balanced scrutiny and for recognising that we all share the common aim of searching the best ways of tackling Scotland’s problematic relationship with alcohol. I continue to believe in most of the proposals and am disappointed and concerned that the Scottish Government has indicated its opposition to all ten of the measures in the Bill. However, having reflected on some of the evidence presented and recognising that some of the measures are not broadly supported, or could be modified, I thought the Committee might find it useful to be made aware of some developments in my thinking in a number of areas.

The Committee will of course appreciate that, in a multi-strand Bill such as this one, it should be possible to remove any individual measure by amendment at Stage 2. This is a different situation from the one that normally arises at Stage 1, where members are expected to vote in favour of the general principles only if they support the majority of what the Bill does. In this case, even if the Committee can only support a minority of the ten measures proposed (though of course I hope it will be more than that), it should recommend that the general principles be agreed to at Stage 1 – to allow those measures that are supported to proceed to the amending stages (at which time the unsupported measures can be removed if need be).

Turning to the areas which I now feel could be adjusted or removed in light of the evidence to the Committee—
Section 2: Alcoholic drinks containing caffeine

Within the EU, Denmark has effectively legislated to limit the caffeine content of pre-packaged alcoholic drinks to 150mg of caffeine per litre by requiring that such drinks can only be placed on the market proved that they are notified to the Danish Veterinary and Food Administration and provided that acceptance is granted.

While I continue to be of the view that there is a link between alcoholic drinks with a high caffeine content and anti-social behaviour, I accept that further research would be helpful in confirming that view. I would therefore be prepared to accept the removal of the time limit of 12 months of the Bill receiving Royal Assent for Scottish Ministers to set a limit of the acceptable amount of caffeine in appropriate alcoholic drinks. This would allow an indefinite period for further research to be carried out.

Section 5: Applications for, or to vary, premises licence: consultation and publicity

Section 5 contains a proposal to extend community involvement in licence applications, in particular, where there is no community council, or the community council was inactive, to provide that written notification of an application for, or to vary, a licence, must be given to all neighbours within a 50m radius of the premises.

I have listened carefully to the arguments against this proposal, in particular in relation to the concerns expressed by some licensing boards of the additional expense and administrative burden which could be created by the extended notification requirements. While I remain convinced about the need to increase community involvement, I am persuaded that a lesser increase than the 50m (perhaps 20 or 25m) might be more workable.

Section 8: Advertising within licensed premises

A number of respondents to the Committee’s call for evidence pointed out that advertising of alcoholic products in areas other than the designated, licensed area of the premises was already covered by existing legislation. Having investigated this matter further, I am content that there is a large degree of overlap between the provisions in section 8 of my Bill and those in paragraph 13 of schedule 3 to the 2005 Act. I would therefore have no objections to this section being removed from the Bill.

Section 14: Alcohol education policy statements

It is a matter of concern to me that the Parliament only seems to debate alcohol when legislation is being scrutinised. The provisions in section 14 could allow the opportunity for a regular review of the effectiveness of the Scottish Government’s policy on public information and education about alcohol. However, I recognise that there is already scope for monitoring and evaluation of the Alcohol Framework for Action; and that there was only limited support for my proposal. I would therefore accept that this section could be removed.
Sections 15 – 29: Drinking banning orders

I have emphasised throughout the Committee’s evidence sessions that the principal aim of my Bill is not to address the needs of the dependent drinker, but to intervene at an early stage where individuals may be at risk of developing a dependency, and to assist in preventing this from progressing. This was part of the intent behind the provisions on drinking banning orders which, while at the same time protecting others from further criminal or disorderly conduct displayed by an individual under the influence of alcohol, would also allow an opportunity for the individual to attend an approved course and support individuals to change their behaviour.

Arguments against the introduction of DBOs have focussed to a large extent on measures which already exist, such as alcohol treatment requirements (ATRs) (which can be imposed as part of a Community Payback Order) and a suggestion that DBOs would simply duplicate a current mechanism. However, ATRs are a type of intervention directed at those who are dependent on alcohol, and not the target audience for DBOs.

It was also argued that anti-social behaviour orders (ASBOs) already provide an appropriate mechanism, roughly equivalent to DBOs. I note that, during the Minister’s evidence session on 10 November, one of the Scottish Government officials indicated that ASBO records are kept by local authorities, but not by the Scottish Government, but that that information could be obtained. I would welcome sight of statistics which would illustrate how often ASBOs have in fact been used for the purposes for which a DBO is specifically intended. In the event that there is evidence that they do in fact serve the same purpose, I would accept that there may be a case for removing the DBO provisions from the Bill. It is disappointing that the Government’s monitoring through MESAS has not demonstrated the use of either Alcohol Treatment Requirements or other alcohol related requirements available under Community Payback Orders nor the use of ASBOs, both to protect the community and encourage the offender to address their alcohol misuse.

In any event, I note that, in its written submission to the Committee, the Scottish Courts and Tribunals Service (SCTS) referred to the requirement to state in open court where a DBO is not being made and anticipated that there would be significant costs implementing these provisions on account of the additional time which this task would take. On reflection, I would be prepared for the provisions which relate to explanations being provided in open court to be removed from the Bill.

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

I remain convinced of the benefits of the requirement set out in section 31 for courts to notify an offender’s GP where alcohol was a factor in their offending behaviour, since it would provide a stronger focus for Alcohol Brief Interventions. However, I accept that it has not attracted much support, including from those who would need to be involved in its implementation. On that basis, I would accept the section’s removal from the Bill.
I hope the Committee will agree that these adjustments to the provisions of the Bill leave the stronger and more generally supported measures in place. The Bill was always a series of further incremental measures to improve Scotland’s relationship with alcohol. The revisions which I have set out here would represent a further reduction to the number of measures in my original draft proposal for the Bill, when I removed four measures after an undertaking from the Government to address them without legislation. The additional changes detailed in this letter could be made at Stage 2 and I hope that, with the proposed revisions, the Committee will feel able to recommend to Parliament support for the general principles of the Bill. I look forward to receiving the Committee’s Stage 1 report in due course.

I am copying this letter to the Minister and to the interested parties who responded to my consultation on the draft proposal for my Bill.

Yours sincerely

Dr Richard Simpson MSP