West Lothian Council

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

Q1 – Do you support the Bill as a whole?

The council recognises and supports the general long term aims of the Bill, which are, among other things, to attempt to regulate the sale and advertising of alcohol, in order reduce problem drinking and alcohol related harm. The council also recognises that, through this, there is potential for long-term savings in public spending, in the main in public health, policing and criminal justice. The council notes that the Bill contains a mixture of changes to existing licensing law and brand new provisions. The council considers that there is an important need to consider, with regard to their anticipated financial and resource implications, how the provisions of the Bill will operate, and what they will achieve.

The work of different council service areas, including the council’s Social Policy Service, will be affected by the provisions of the Bill. The council is a partner in West Lothian Community Safety Unit (CSU), which has a key role to play in the reduction of antisocial behaviour, violence and the community and social harm caused by substance misuse in West Lothian.

Q2 – Do you support particular provisions in the Bill?

The council supports the following provisions of the Bill, for the following reasons:

Section 1 – minimum pricing of packages containing more than one alcoholic product

The council recognises that this provision of the Bill is intended to expand the provisions of the current legislation in relation to multi-packs 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.

The council supports this provision of the Bill insofar as it seeks to prevent members of the public being able to purchase alcohol at lower costs, thereby discouraging them or removing the incentive to 'bulk-buy' and, through bulk-buying, potentially to consume more alcohol than they would otherwise have intended to consume.

Section 2 – alcoholic drinks containing caffeine

The council supports this provision of the Bill insofar as this should help to reduce the number of incidents reported by the Scottish Prison Service referred to paragraph 22 of the Financial Memorandum to the Bill as well as addressing root issues for antisocial behaviour and violence.

Section 3 – age discrimination: off-sales

The council supports this provision of the Bill insofar as an all- encompassing, nationwide approach should be taken to the minimum legal age for off sales, and that it would be discriminatory for a Licensing Board to choose particular off sales premises in which to impose conditions of age and not others. In addition it would be
confusing for a different minimum age to apply for on sales in an area than for off sales.

The council notes that this provision of the Bill appears simply to clarify the existing terms of sections 27 and 27A of the 2005 Act by making express that section 27A(2) applies to both the Scottish Ministers and Licensing Boards.

Section 4 – container marking: off sales

The council supports this provision of the Bill insofar as it should strengthen police, local authority and voluntary organisations’ efforts to prevent alcohol being sold illegally and agent (proxy) purchasing for young people under 18 years of age, subject to careful consideration of the financial and resource implications this provision would have (see answer to question 3 below). The findings of the pilot scheme should be considered carefully as to what evidence is available of what this provision of the Bill could achieve. Consideration should be given as to whether this provision of the Bill, rather than facilitating the making of applications to Licensing Boards and variation of premises licence conditions in individual cases, would be better implemented as a nationwide requirement on suppliers/retailers.

Section 5 – applications for, or to vary, premises licences: consultation and publicity

The council supports this provision of the Bill insofar as it should strengthen the involvement of the community in the licensing process.

Sections 6 to 13 – restrictions on advertising of alcohol

The council supports a restriction on alcohol advertising within 200 metres of certain premises which are used primarily by children and in particular circumstances. The council considers, however, that careful consideration should be given to the wide definition of advertising contained in the Bill, and the consequences, including possible unintended consequences, this may have. For example, whether the ban would, or is intended, to extend to the use outdoors of various items commonly used on licensed premises, including parasols, branded glasses and beer mats. With regard to the scale of the restrictions proposed, these could also have significant commercial consequences for premises and consequently local town centres.

Section 14 – alcohol education policy statements

The council supports an obligation on the Scottish Ministers to publish alcohol education policy statements and to review these every 5 years. The council and other Community Safety Unit (CSU) partners are in a good position to report on how the CSU partners deliver effective prevention campaigns and education programmes along with strategies to identify and deliver early intervention approaches where it is needed in order to highlight the consequences of alcohol misuse and focus on promoting alternative health lifestyle choices.

Section 15 to 29 – Drinking Banning Orders

The council recognises that Drinking Banning Orders (DBOs) could have a role to play in protecting vulnerable people and the general public and is supportive of this. The council supports this provision of the Bill insofar as it should contribute to both
the recovery for the individuals concerned and in terms of community safety. The council also recognises that in terms of recovery this will also depend on the treatment options available to the person who would be the subject of a DBO.

However, the council also considers that careful consideration should be given to what a DBO could achieve which an Anti-social Behaviour Order cannot currently achieve. In addition consideration must be given to who would be responsible for providing approved courses to persons who would be the subject of DBOs. Reference is made to paragraph 93 of the Financial Memorandum to the Bill which envisages that such courses would be delivered by commercial organisations for a fee to be paid by the person attending the course. If the position were to change and, for example, Alcohol and Drugs Partnerships were to provide such courses, additional resource would be required, in particular as high demand may result based on the ability to attend such a course and then to apply to have a DBO revoked.

**Section 30 – fixed penalty notices involving alcohol: alcohol awareness training as alternative to fixed penalty**

The council recognises that early intervention measures may reduce incidences of problem drinking and associated problems. The council supports this provision of the Bill as an alternative to a fixed penalty notice under the Antisocial Behaviour etc. (Scotland) Act 2004 for minor offences, subject to the questions of funding and resource availability which would first have to be resolved. In particular it is unclear whether the delivery of alcohol awareness training would fall on local authority community safety/ anti-social behaviour teams to deliver and, if so, how the costs of this would be met in the short term. In addition the Council's experience tends to show that awareness sessions can be ineffective depending on the nature of the individual, and therefore that a 'one size fits all' approach does not work. For certain individuals, in order to be effective, something more long-term and intensive is required.

**Section 31 – offences involving alcohol: notification of offender's GP**

The council notes that while GPs will be under no obligation to take action, this provision may result in an increase in referrals for treatment to different services. However, as the council currently only takes referrals through the courts by way of court orders, which are funded, this provision of the Bill is not expected to result in additional referrals to council services, or additional cost to the council.

**Q3 – Do you have concerns about particular provisions in the Bill?**

**Section 4 – container marking: off sales**

With reference to paragraph 33 of the Financial Memorandum to the Bill, the council is very surprised that the costs on local authorities associated with this provision are expected to be likely to include purchasing and distributing the equipment required to implement the container marking requirement (such as stickers or UV pens). The reasons for this are:
there is no other example of any licence condition where local authorities are expected to provide licence holders with the means to comply with the condition as in all other cases they are expected to do this themselves e.g. the provision of CCTV.

in principle this would compromise the degree of separation between the imposition of licence conditions and compliance or otherwise with those conditions which should be kept absolute. The legislation should not create a circular arrangement whereby local authorities are required to provide licence holders with the means to comply with a licence condition and the question of whether the licence holder has complied with the condition or otherwise could later come before the Licensing Board, when the means available to comply with the condition could be subject to scrutiny.

if this cost requirement was imposed on local authorities, the question of maintenance and upkeep costs of the associated equipment would also arise. The council does not consider that it would be appropriate or reasonable to impose these costs on local authorities.

the council notes that the Financial Memorandum states that equipment costs will depend on the type of equipment used and the scale of any scheme and so are difficult to estimate. The scale of container marking for example for a supermarket would be significant and would require appropriate system and staffing arrangements to be in place. The council expects that the costs associated with this would be very significant.

Paragraphs 33 and 34 of the Financial Memorandum refer to the costs of liaison with the police on written requests to vary licence conditions to provide for off sales marking. The council does not recognise, as stated in paragraph 34, that these are likely to be minimal and absorbed in normal running costs for local authorities and the police.

The council notes that in terms of section 27B(5) of the Bill a written request for a container marking condition by the Police is required to set out, among other things, how the container mark should be applied. While this sounds simple, in practice it is likely to be considerably more complex.

In the first place, forward planning on the part of local authorities and the Police would be required. This would include for example considering the practical means of marking different containers and devising a system of container marking which would enable premises containers to be marked in a way which avoided risk of duplication or confusion of the markings given to the containers for different premises. The novelty of these issues is likely to make the work required relatively resource intensive. Any input required from third party agencies or advisors may also incur costs.

Similarly, with reference to liaising with police on revoking container marking conditions, it is unclear in what circumstances the Board could consider that the condition was no longer necessary or expedient for the purposes of any of the licensing objectives. Again while this sounds simple, in practice it is likely to be considerably more complex. It is unclear what information the Police will be able to
ingather through container marking, and by what measures it will be possible to compare the effect of continuing to impose a container marking condition against its being revoked. Licence holders can apply under the 2005 Act to vary their premises licence to have a condition of their licence removed. It is likely that licence holders will wish to apply to have a container marking condition removed from their licence if they can and the considerations referred to above will also require to be addressed at that stage.

Paragraph 35 of the Financial Memorandum refers to the possibility to absorb the costs referred to in licensing fees. The council recognises as stated in paragraph 35 that most local authorities have already set their fees at the maximum level permitted under the current Regulations and that it would be for the Scottish Ministers to increase these maximum levels. It should be noted that, as this provision of the Bill would create an entirely new procedure under the 2005 Act, it is not clear which if any of the existing fees could properly be increased to accommodate the costs associated with this.

Q4 – How will the particular provisions in the Bill fit with your work, or the work of your organisation?

Subject to the above, the council considers that the provisions of the Bill will generally fit in well with the work of the council for prevention and intervention of alcohol related issues, by reducing intake of alcohol and its negative impact on individuals and communities.

Q5 – Will the Bill have financial or resource implications for you or your organisation?

The council welcomes the attempts in the Financial Memorandum to the Bill seeking to address the financial implications of the provisions contained in the Bill for different bodies, including local authorities. While Licensing Boards are distinct legal bodies from local authorities, local authorities provide comprehensive resources and services to Licensing Boards to enable them to carry out their functions. Therefore costs considerations for Licensing Boards are direct cost considerations for local authorities.

The council considers that there are parts of the Bill which will have significant short to long term financial and resource implications for local authorities.

Section 1 – minimum pricing of packages containing more than one alcoholic product

There would be a financial and resource implication for the council of an administrative nature as this provision of the Bill would require an updated set of mandatory conditions to be sent to all premises licence holders.

Section 2 – alcoholic drinks containing caffeine

There would be a financial and resource implication for the council of an administrative nature as this provision of the Bill would require an updated set of mandatory conditions to be sent to all premises licence holders and occasional licence holders. This may include occasional licences issued before the date of this
provision of the Bill coming into force, if the provision came into force before the date(s) licensed under the occasional licence. An administrative exercise would have to be undertaken to determine if this was the case.

Section 4 – container marking: off sales

Detailed comment is provided above in answer to question 3.

Section 5 – applications for, or to vary, premises licences: consultation and publicity

The resources provided to the Board by the council include the publishing of information and application forms on the council’s website. The financial and resource implications of this provision of the Bill for the council would therefore include the costs of updating all of the relevant information and forms to reflect this provision of the Bill.

In view of the significant impact this provision of the Bill would have on the premises licence application and premises licence variation process, it is likely that some publicity material would be required in order to make applicants and the wider public aware of the change, and some financial and resource implications would also arise from this.

The neighbour notification element of this provision of the Bill (change of “4 metres” to “50 metres”) would lead to significant resource implications for council officers in, first, identifying neighbours within the significantly bigger radius specified in the Bill and, second, preparing and issuing a significantly greater number of neighbour notifications accordingly. There would be a significant financial implication for the council in terms of paper costs arising from the greater number of notifications required too.

With reference to paragraphs 41 to 48 of the Financial Memorandum to the Bill, the council considers that the costs associated with the neighbour notification element have been significantly underestimated for the following reasons:

• the estimate in paragraph 46 that each Licensing Board is responsible for dealing with, in total, eight applications for premises licences and premises licence variation in an average year is a major underestimate.

• the estimate in paragraph 48 is therefore considered to be a major underestimate too.

With regard to paragraph 49 of the Financial Memorandum, and in view of the very considerable additional costs likely to result from this provision of the Bill, the council would highlight that the majority of local authorities have already set their fee for premises licence and premises licence variation applications at the current maximum permitted level.

Sections 6 to 13 – restrictions on advertising of alcohol

With reference to paragraph 55 of the Financial Memorandum to the Bill, the council considers that there will be considerable initial costs in establishing a process for
payment of and recording of fixed penalty payments. Clearly some or all of these costs may be offset in time depending on the number of penalties paid.

There will also be significant resource implications for Licensing Standards Officers who would be responsible for issuing fixed penalty notices. Beyond the preparing and issuing of notices this would appear to include the need to liaise with Police Scotland who will also be authorised to issue notices, for the purposes of consistency and avoiding duplication. The council considers that thought should be given as to the compatibility of the general function of Licensing Standards Officers under section 14 of the 2005 Act (providing information and guidance; supervising compliance with licence holders; and providing mediation services) with the issuing of fixed penalty notices.

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

With reference to paragraph 101 of the Financial Memorandum to the Bill (footnote 33), the council notes that, based on the Fife model, funding for alcohol awareness training as alternative to fixed penalties may come from Alcohol and Drugs Partnerships (ADPs). However, paragraph 104 of the Financial Memorandum states that, depending on the overall source of funding for the schemes, it is anticipated that some of the funding for the scheme may come local authorities. Based on the information currently available, the council considers it to be unclear as to where the funding for alcohol awareness training would come from.

Q6 – Do you have any other comments or suggestions relevant to the Bill?

The council’s Social Policy Service would express concern regarding the availability of alcohol and the relationship between this, the legislation relating to overprovision and overprovision policy. In particular, many licensing boards appear to have found it difficult to put into place a meaningful overprovision policy, based on the terms of the Scottish Government’s formal guidance to licensing boards regarding overprovision, including that:

“The results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality”;

and the quality of evidence and information available to licensing boards through consultation regarding overprovision, as compared to the terms of this guidance.

This is a wider issue which, while it does not relate to the provisions of the Bill, highlights the relatively complex legal approach which is currently being taken to addressing what has been identified as Scotland’s problem relationship with alcohol, and how the law is seeking to address this as a whole.

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