Scottish Beer and Pub Association

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

The Scottish Beer & Pub Association (SBPA) is the trade body representing breweries and pub operating companies in Scotland\(^1\). Together with our sister organisation the British Beer & Pub Association, our members account for over 90% of UK beer sales and own around 20,000 pubs. There are almost 5,000 pubs and 81 breweries in Scotland. The Scottish beer and pub sector as a whole supports over 60,000 jobs and contributes more than £1.5 billion to the Scottish economy.

It is worth highlighting that alongside a fall in overall alcohol consumption in Scotland of 10% since a peak in 2005, there has been positive progress on a number of other indicators demonstrating a reduction in alcohol related harm in recent years:

- The proportion of Scottish men and women aged 16-24 ‘binge drinking’ declined 15% between 2003 and 2013.
- The proportion of Scottish children aged 13 who have ever tried alcohol has dropped from 64% to 32% since 2000, and the proportion of children aged 15 who have ever tried alcohol has dropped from 87% to 69%.
- Since peaking at 43,053, (856 per 100,000 population), in 2007/2008, alcohol-related hospital stays in Scotland have declined to 36,206, or 697 per 100,000 population.
- Deaths from alcoholic liver disease in Scotland have also shown a marked decline over recent years, falling 32% between 2006 and 2013.

We welcome the opportunity to provide our views to the Committee on provisions in the Bill relevant to our membership.

1. **Do you support the Bill as a whole?**

We do not support the entirety of the Bill, our areas of concern are outlined in answer to question 3.

2. **Do you support particular provisions in the Bill?**

Part 2, Chapter 3 – Alcohol education policy statements

SBPA and members believe that education is extremely important is ensuring that young people and the wider population develop a healthy and balanced approach to alcohol and to reduce the potential for alcohol related harm. We would therefore be supportive of this provision.

\(^1\) AB Inbev, Admiral Taverns, Carlsberg UK, Caledonian Brewery, Diageo, Hawthorn Leisure, Heineken UK (inc. Star Pubs & Bars), Marston’s, SAB Miller, Molson Coors, Punch Taverns.
Part 2, Chapter 1 – Drinking banning orders

SBPA believes that alongside the responsibility of producers and retailers to produce, market and sell alcohol responsibly there is a personal responsibility on consumers in terms of drinking responsibly and not engaging in alcohol related anti-social behaviour.

The vast majority of people drink responsibly, but those that do not can cause problems for retailers and other customers. We are therefore supportive of appropriate penalties for those that do break the law, with drinking banning orders a potential tool for police in seeking to enforce the law and ensure a safer and more pleasant drinking environment for all.

Part 2, Chapter 2, s.30 – Alcohol awareness Training

Evidence shows that education and awareness are some of the most powerful tools to ensure that people understand the consequences of irresponsible consumption. We are therefore supportive of the proposal to offer alcohol awareness training in place of a fine to an offender guilty of an alcohol related offence, at the discretion of the police, if they feel that this is likely to be more effective measure than a fine.

3. Do you have concerns about particular provisions in the Bill?

Part 1, Chapter 1, s.1 - Minimum price of packages containing more than one alcoholic product

The evidence-base on the effectiveness of a ban on multi-buy discounts remains uncertain, with the primary risk of impacting responsible consumers who make up the majority.

Part 1, Chapter 1, s.4 - Container marking: off-sales

In certain circumstances we recognise that it may be appropriate for Licensing Boards to place conditions on premises which appear to be persistently miss-selling alcohol. We understand that there have also been a number of voluntary pilots of bottle marking schemes which have had some success in encouraging responsible retailing.

We would however be concerned about any attempt to take this beyond a largely voluntary initiative or promote widespread use of licensing conditions to enforce such measures. Licensing conditions should always be evidence based and proportionate and this is unlikely to be a necessary requirement for the vast majority of premises and may instead be a burden on retailers. We are also concerned at the suggestion that police intelligence would be used as the basis for initiating such a scheme (para 40 of the Policy Memorandum). It is very difficult for an operator, especially a sole trader, to rebut “police intelligence”. Furthermore, the premises licence holder is unable to appeal the decision of a licensing board to place such a condition on the licence. This raises questions about natural justice and the cost of challenging a board’s decision in this regard since the only recourse would be a costly judicial review.

Any schemes of a larger scale and of a mandatory nature could also have implications for producers, where large retailers may require companies to mark
bottles before they agree to stock them. This could be costly and burdensome as producers would potentially have to produce several different kinds of packaging for the same brands/products for use in different areas. We would suggest that such schemes are better kept as small scale, voluntary initiatives and any conditions used should be targeted, and evidence based and proportionate rather than blanket measures. In such cases, the marking should also only be limited to UV pens rather than stickers as UV marking is invisible to the responsible consumer who buys the product whereas stickers convey to the consumer that this is a ‘problem product’ and affects the design and aesthetic of the packaging.

Part 1, Chapter 1, s.5 - Community involvement in licensing decisions

We are concerned that the legislation as drafted will add significant costs and delay to both local authorities and individual businesses.

We believe there is ample scope for community groups to be involved in local licensing decisions under the existing licensing regime. Licensing Boards must consult direct neighbours of potential licenced premises (four metres) and community councils have a consultative role in the licensing process. A Scottish Government study quoted in the policy memorandum to the Bill showed that the vast majority (84%) of community councils were considered to be active.

The Bill seeks to create a provision whereby, in areas where there is no community council, the Boards must consult residents within an area up to 50 metres from the premises. We believe that this would add an administrative burden to the Board itself, and could add significant delays to businesses in the process of making a new application with knock-on effects including costs. There is no evidence presented as part of the Bill that this extension is required or communities are being adversely impacted under the present system – which as noted above already provides opportunities for individuals and local groups to be involved in licensing decisions relevant to their area.

We also have concerns around the proposal to increase the period for lodging an objection to a licence application from the current 21 to 42 days, and the same extension to apply to display of notices at or near the premises. Again, we would argue that no compelling evidence is presented as to why the current system requires changing and this will add cost and delay to the process, in addition to an administrative burden to Boards and businesses. For example, some boards use Licensing Standards Officers to deliver the notifications and therefore, they will have less time to devote to their statutory duties.

Part 1, Chapter 2, s.6 - Ban on alcohol advertising near schools etc.

Whilst we would unequivocally state that none of our members would seek to target anyone underage and therefore we recognise the sentiment behind these proposed measures to protect children, we have a number of concerns about the effectiveness and practicality of these proposals as well as the potential for unintended consequences.

Through alcohol advertising and marketing, companies seek to capture greater market share and increase brand profile. However, the balance of evidence does not demonstrate a clear effect on overall consumption or on alcohol related harm from
advertising. The recent OECD report highlighted that previous predictions made around the effect on consumption from advertising restrictions are likely to be ambitious.

Alcohol advertising and marketing in the UK is governed by a strict and well-regarded system of self-regulation through the codes of practice operated by the Portman Group and the Advertising Standards Authority. These rules prevent alcohol producers from encouraging irresponsible drinking or targeting underage people in advertising. The majority of studies show that advertising has little impact on children and that the biggest influence on those that are underage are parents and peers. It is also positive to note that underage drinking in Scotland is on the decline - the proportion of children aged 13 who have never tried alcohol has increased from 36% to 68% since 2000, and the proportion of children aged 15 who have never tried alcohol has increased from 13% to 31%.

Not only are fewer children trying alcohol, but those who are consuming it are doing so less frequently. There has been a decline in the proportion of children who report drinking once a week or more often. Since 2000 the proportion of 13 year olds drinking this frequently has declined from 13% to 2%, and for 15 year olds the proportion fell from 30% to 12%.

We would therefore be concerned about the effect of further attempts to limit advertising, particularly on small businesses such as pubs and particularly in the context of this legislation where the definitions given of ‘advertisement’ seems very wide. In our view the current definitions could prevent licensed premises from using a whole range of branded materials such as brewery parasols, awnings, A-boards etc. just because they happen to be located in a specific area. This may affect traditional pubs who have beer brands etched into their external windows.

Although there are exceptions outlined, these appear to somewhat contradict the assumed purpose of the legislation. We would suggest that it would be very difficult to enforce these restrictions without having a significant impact on the operation of a number of businesses. In this context we do not believe that this measure is proportionate or necessary. Pubs are already heavily regulated businesses and have been under considerable pressure from changing consumer habits and a challenging economic climate. However, these restrictions have the potential to force pubs to limit any kind of promotion of their business beyond the purely factual for little discernible benefit. The intention appears to be to bring about a return to the days when licensed premises were seen purely as drinking establishments, hidden behind frosted windows rather than the more family friendly, community oriented place that most pubs are today.

In addition would we would have real concern about what could be included as an ‘outdoor premises designed or adapted for use by members of the public as a children’s play area’. Depending on scope this could potentially mean that there are few urban areas that are not covered by the restrictions entailed in this legislation.
Part 1, Chapter 2, s.8 – Advertising within licensed premises

Whilst this is primarily an issue for the off-trade, a number of our producer members are concerned that this restriction would do little to tackle alcohol related harm and yet impact on consumers who will be unable to view full information about products or special offers that they may wish to take advantage of. For example, this could include advertisements suggesting beer and food matching which are highly unlikely to encourage irresponsible consumption but allow consumers to be more aware and make more informed choices. The wide drafting could also apply to magazine covers, e.g. a publication with a picture of a bottle of beer displayed in a supermarket newsagent section would technically be in breach according to the wording of this Bill.

Part 1, Chapter 2, s.9 - Advertising at sporting and cultural events

The issues we have outlined in relation to the proposed ban on advertising near schools would also apply to these proposals. As outlined we believe that there is potentially a very wide scope of what is included, such as branded uniforms and equipment and this could present significant operational challenges to the running of a wide range of sporting and cultural events including the Edinburgh Festival and the Comedy festival. There are also significant cost implications for companies having to follow different rules in different parts of the UK.

This is without any evidence to demonstrate what harm such activities are currently causing and without any recognition of the strict rules that those advertising at or sponsoring such events are committed to. All major UK producers are signed up to both the Portman Group Code of Practice on advertising and marketing, and as of 2013 a new code of practice on sponsorship, requiring all those entering into sponsorship agreements to support some kind of responsible drinking initiative or community/grass roots sports initiative.

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

Please see answers above for specific impacts of proposals.

5. Will the Bill have financial or resource implications for you or your organisation?

Please see answers above for specific impacts of proposals.

6. Do you have any other comments or suggestions relevant to the Bill?

If passed this Bill will be the latest in a number of Acts that amend the Licensing (Scotland) Act 2005 for example, the Criminal Justice and Licensing (Scotland) Act 2010 and the Air Weapons and Licensing (Scotland) Act 2015. This makes it very difficult for all involved in the licensing process to keep up to date with the law. If it is decided to change the law yet again, we would suggest at the very least a consolidated copy of the 2005 Act should be produced, with a view to improving accessibility and clarity.

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