Scotch Whisky Association

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

Introduction

1. The Scotch Whisky Association (SWA) is the industry’s representative organisation. Its 57 member companies – Scotch Whisky distillers, blenders, and bottlers – account for over 95% of the industry. We welcome the opportunity to make this submission to the Committee.

2. The context in which this Bill is being brought forward is that of decreasing trends across a broad range of alcohol-related harms, as indicated by official statistics:

- Alcohol-related death rates have declined 35% from a peak in 2003. Death rates from alcoholic liver disease have declined by 32% since 2006.\(^1\)
- The rates of stays i.e. admissions to hospitals with alcohol-related conditions peaked in 2007/2008 and have since declined by 19%.\(^2\)
- The proportion of men and women aged 16-24 ‘binge drinking’ declined 15% between 2003 and 2013.\(^3\)
- Since 2000 the proportion of 13 year olds drinking once a week or more has decreased from 13% to 2% and for 15 year olds from 30% to 12%.\(^4\)
- The number of convictions for drink driving has declined 50% since 2002.\(^5\)

While further improvements are required this confirms that current policy to tackle alcohol misuse is working. We are making progress in changing Scotland’s relationship with alcohol, which is to be welcomed.

3. We are committed to playing our part to reduce alcohol-related harm and promoting a culture where responsible alcohol consumption is the accepted norm and misuse is minimised. The SWA and its members are committed to tackling misuse and promoting the responsible consumption of alcohol through a range of initiatives:

**SWA Code of Practice for the Responsible Marketing of Scotch Whisky:** responsible marketing is a key deliverable for the SWA. The Code launched in 2005 and currently in its 3rd edition sets out a comprehensive set of rules to ensure the responsible marketing of Scotch Whisky across all media. The Code is backed by an independent complaints panel and a range of sanctions for those found in breach of the

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\(^1\) Monitoring and Evaluating Scotland’s Alcohol Strategy. Fourth Annual Report December 2014
\(^2\) Alcohol-related Hospital Statistics Scotland 2013/14.
\(^3\) Scottish Heath Survey 2013
\(^4\) Scottish Schools Adolescent Lifestyles and Substance Use Survey
\(^5\) Criminal Proceedings in Scotland

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Code. A requirement of the Code is that all advertising must carry a responsible drinking message.

**The Scotch Whisky Action Fund**: Launched in December 2013 and managed by Foundation Scotland the Fund aims to support and develop new innovative projects across three themes: young people (Under 18), families and communities suffering as a result of irresponsible or excessive consumption of alcohol. The SWA has committed £500,000 to the Fund. A total of £100,000 will be available each year from 2014 to 2018. In 2014 a total of 8 projects have been supported across Scotland covering all three of the Fund’s themes. The closing date for applications this year is 30 June.

**Scottish Government Alcohol Industry Partnership (SGAIP)**: The SWA has been a leading partner of the SGAIP since its launch in 2007. Its primary objective is to deliver joint initiatives to tackle alcohol-related harm and promote responsible drinking. The Partnership has delivered a number of initiatives: national Alcohol Awareness Week, sponsorship guidelines, a model employee alcohol policy, social responsibility standards, a low alcohol pilot and the Fife Alcohol Partnership Project, which looked at a multi-component approach to tackling alcohol-related harm.

The Partnership is currently focusing action on the following initiatives: **125ml wine campaign** promoting uptake of the 125ml wine measure in the on-trade, which aims to promote and improve public health by giving customers greater choice. Following the successful **Best Bar None pilot** in Airdrie and Coatbridge, which saw a downward trend across a range of alcohol-related anti-social behaviour statistics, agreement has been reached to expand the scheme across North Lanarkshire. A pilot campaign to run in Motherwell and Wishaw over the summer months will raise awareness of the issue of **proxy purchasing** to help to reduce underage drinking. Support for **Safe Zone Edinburgh** which provides non-judgemental advice and first aid support in the city centre at night time to anyone who requires help. Continue to support the roll out of **Community Alcohol Partnerships** schemes to tackle underage drinking and anti-social behaviour.

The Partnership also works as a delivery mechanism for Scottish Government and Drinkaware campaigns to promote responsible consumption and highlight the consequences of misuse.

**Consumer Information and Education**: SWA members, under the Responsibility Deal, contributed to the pledge to ensure that 80% of products on shelf include on label unit information, the daily sensible drinking guidelines and a warning about drinking when pregnant. SWA members also support Drinkaware, the primary provider of alcohol information and public education.
Specific Questions the Committee is seeking responses to

Do you support the Bill as a whole?

4. No. We have concerns with regard to particular provisions in the Bill, which are set out under the relevant section below.

   The SWA supports evidence based policy. Whilst some of the measures are not directly relevant to SWA members, it is important the proposed measures have an evidence base and would be considered effective measures in reducing alcohol-related harm.

5. Minimum price of packages containing more than one alcoholic product (section 1); this measure does not impact significantly on the sale of Scotch Whisky as it is not typically sold in multi-packs. However, it is unclear what this specific measure will deliver in terms of the aims of the Bill.

6. Alcoholic drinks containing caffeine (section 2); again this is not directly relevant to Scotch Whisky and we have no comment to make.

7. Container marking: off-sales (section 4);

   This measure is aimed at underage drinking. It would allow Licensing Boards, at the request of the police, to vary premises licences of off-sales to require participation in container marking schemes. A scheme would require marking all or selected containers with a sticker or UV pen to allow any confiscated product to be traced back to the source premise.

   As this is specific to retailers it is not directly relevant to SWA members. However, we would observe that container marking schemes require to be carefully considered as to what information they can usefully provide. Just because containers of alcohol products confiscated by youths can be traced back to a particular store does not mean they were able to purchase from that store or that it was not obtained via proxy purchase. Adequate CCTV coverage would be required to confirm any infringements of the law. We would suggest that the UV pen approach should be the preferred method for any such schemes. UV marking is invisible to the responsible consumer who buys the product whereas stickers may convey to the consumer that this is a ‘problem product’ and also negatively affects the aesthetics of the pack by adding an ugly, often badly applied sticker.

   A number of voluntary schemes have run in Scotland, as recognised in the policy memorandum accompanying the Bill. However, the case for legislative approach against a voluntary approach is not made, especially in the context of underage drinking falling in Scotland. Neither is it clear in the Bill what level of evidence the police would be required to submit to the Licensing Board in order in implement such a scheme.

8. Applications for, or to vary, premises licence: consultation and publicity (section 5);
We have no specific comment to make. We would note that Richard Simpson MSP submitted this measure as an amendment at Stage 2 of the Air Weapons and Licensing (Scotland) Bill and was debated by the Local Government & Regeneration Committee on 20 May. During that debate the Cabinet Secretary encouraged Dr Simpson to withdraw the amendment on the assurance that the Scottish Government will consult on updating the procedure regulations under the Licensing Act. This was duly done and therefore we assume this measure will be considered separately as part of that process.

9. **Offences involving alcohol: notification of offender’s GP (section 31).**

This measure is not directly applicable to the SWA. However, we fail to understand what impact it would make in terms of reducing alcohol-related harms as there is no compulsion on the parties involved to do anything.

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

10. Yes. We support the following provisions.

11. **Age discrimination: off-sales (section 3);**

We support having a national legal purchase age applicable to all licenced premises across the country. The legal purchase age is 18 and therefore adults aged 18-20 are legally entitled to purchase alcohol. They should be treated as responsible adults and not have their right to purchase alcohol removed due to action of an irresponsible minority.

12. **Alcohol education policy statements (section 14);**

This measure would require Scottish Ministers to publish every 5 years a statement of their policy on the provision of public information and education on alcohol consumption. Ministers would be required to review the effectiveness of the policy set out in the statement and details of implementation. A report on the review and its conclusions would be required to be laid before Parliament at least 6 months before the 5 year period expires.

It is important that Ministers publish their policy and plans in relation to alcohol education and public information campaigns. This is an important element of any strategy to tackle alcohol misuse. It would also allow for better co-ordination with other providers of alcohol education and information, such as Drinkaware.

It is important that such measures are delivered and reviewed on a regular basis to assess effectiveness. They require to be adequately funded.

13. **Drinking Banning Orders (DBOs) (sections 15-29);**

We are broadly supportive of this measure. It is clearly aimed at individuals who have been involved in misusing alcohol. However, in line with other parts of the Bill we believe that DBOs should be piloted in at least two
areas and evaluated before being rolled out in order to assess effectiveness and costs.

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

This measure provides for alcohol awareness training to be offered as an alternative to a fixed penalty notice for people whose offending appears to be related to their alcohol consumption. The Bill provides for a further pilot to be undertaken in an urban area based on the scheme piloted in Fife. The scheme would be evaluated and a report placed before the Parliament no later than 18 months from commencement of the pilot. If the evaluation is positive a duty will be placed on Ministers to roll it out across Scotland within three years of the date of the evaluation report being placed before Parliament.

If the pilot is successful we would support this measure.

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

15. Yes. We have specific concerns relating to provisions on advertising.

16. We note the policy memorandum makes reference to the experience of France and the restrictions on advertising introduced by the Loi Evin, which was introduced in 1991. This legislation has failed to reduce underage drinking in France. An official French parliament report stated that this ban had been ineffective in reducing high-risk drinking patterns. Indeed, the head of the French National Association for the Prevention of Addiction and Alcoholism (ANPAA) accepts that the effects of the law are “weak”\(^6\). According to the 2011 European School Project on Alcohol and Other Drugs (ESPAD), which collects comparable data on substance use, including alcohol, among 15-16 years olds in 36 European countries notes an increase in alcohol consumption in this age group in France between 2007 and 2011, also an increase in frequency of consumption over the past 12 months. Indeed the proportion of 18-25 year olds who report repeated drunkenness has almost doubled since 2005, from 15% to 29%\(^7\).

17. The sections on advertising are aimed at de-normalising alcohol for young people under the legal purchase age. We would suggest that alcohol is already de-normalised for this group. We should focus and concentrate on de-normalising misuse across Scottish society.

18. Alcohol marketing in the UK is comprehensively controlled. The current legislative framework, along with effective self-regulation ensures that alcohol marketing is not aimed at young people under the legal purchase age. They are protected through a combination of placement and content

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\(^6\) The ‘Loi Evin’ : a French exception, Dr. Alain Rigaud, Président Association Nationale de Prévention en Alcoologie et Addictologie (ANPAA)

\(^7\) Institut national de prévention et d’éducation pour la santé
restrictions. We would also suggest the Bill as drafted fails to recognise the rules and Codes currently in place.

19. Ban on advertising near schools etc (section 6 and 7)

The legislation is complex. We query the proportionality of the measure within the context of sustained decline in underage drinking and its practicality in terms of compliance/enforcement. It is unclear how it will operate. Whilst there may be an adequate register of school and nurseries, is this available for all crèches? If someone was to open a crèche or a new play park it is unclear who would be responsible for informing licensed premises or media outlet operators that they come within a restricted area? Would this be a responsibility of licensing boards?

We are also concerned that it could easily lead to criminalisation of our members for practices that have been in place for many years, with no evidence presented that it will achieve the desired aim.

Many of our members operate distilleries in rural areas of Scotland which are on occasion within towns and villages and have been for many years. Such facilities provide important employment in areas where other opportunities may be limited. These distilleries may have been there before any school or crèche was built or opened next to them. Distilleries may have within their grounds billboard advertising or a flag of the distillery but the distillery is also the name of the brand. This could be banned for some distilleries purely on circumstance of location even though they are established parts of the community.

We are also concerned this measure would impact the advertising of important events, such as the Islay and Speyside Whisky Festivals, which are important tourism attractions bringing investment to these communities.

It is worth highlighting this is an issue that has already been considered and actioned by industry through a voluntary approach. Under the UK Government Responsibility Deal pledge A6 states ‘We commit to further action on advertising and marketing, namely the development of a new sponsorship code requiring the promotion of responsible drinking, not putting alcohol adverts on outdoor poster sites within 100m of schools and adhering to the Drinkaware brand guidelines to ensure clear and consistent usage.’ – See link to the pledge: https://responsibilitydeal.dh.gov.uk/pledges/pledge/?pl=6.

There are currently 97 signatories to the pledge including the Outdoor Media Centre, the trade body for the outdoor advertiser media owners.

21. Advertising within premises (section 8)

This only applies where off-sales premises form part of a larger retail premise. No assessment is given as to how much advertising currently takes place within such outlets outside the alcohol display areas. Retailers
primarily advertise alcohol promotions. Under the Alcohol Etc (Scotland) Act 2010 alcohol promotions, which includes advertising, can only take place within alcohol display areas.

As written this measure could apply to magazine covers. For example; would it mean that ‘Whisky Magazine’ displayed in the magazines areas of a superstore would need to carry a ‘wraparound’ to cover up whatever picture is on the cover or only be allowed to be displayed in the alcohol display area?

22. Advertising at sporting and cultural events (section 9)

Under this provision it would be an offence to display advertising at sporting and cultural events where the majority of participants are under 18 or the intended audience is mostly U18s. This applies only to events held within premise e.g. not those held outside. When the venue is within a larger premise restrictions only relate to that room, court, event hall, not the entire venue.

This measure fails to recognise the current advertising rules, which must be followed by all advertisers, agencies and media owners (enforced by the Advertising Standards Authority); marketing communications must not be directed at people under 18 through the selection of media or the context in which they appear. No medium should be used to advertise alcoholic drinks if more than 25% of its audience is under 18 years of age.

Also, the Portman Group Sponsorship Code, which came into force on 31 January 2014, and which was based on the sponsorship guidelines developed by the SGAIP, includes three specific rules:

3.3 Drinks companies must not sponsor individuals, activities, teams, events, tournaments, competitions, bands or celebrities which have a particular appeal to, or are primarily aimed at, under-18s.

3.5 Prior to sponsoring an event, team or activity, drinks companies must use their reasonable endeavours to obtain data on the expected participants, audience or spectator profile to ensure that at least the aggregate of 75% are aged over 18.

3.6 Sponsorship at events or tournaments which do not meet the 75% threshold are permitted but only if restricted to defined areas to which at least 75% of attendees are aged over 18. In such cases, the drinks company must not be the main sponsor but may be one of a number of sponsors. The drinks company may be the main sponsor of an age-restricted area.

A copy of the Code can be found at the link http://www.portmangroup.org.uk/codes/sponsorship-code.

In the guidance which accompanies the Code it states:
Particular care should be taken if a permanently alcohol-sponsored venue hosts an event at which less than 75% of the audience is aged over-18; every effort should be made to cover alcohol branding for the duration of that event.

Also, that companies are encouraged to work with rights holders to ensure they and any of their other contracted partners, suppliers or agencies are aware of the current regulations and codes applicable to alcohol sponsorship and marketing. This might also include a clause in the sponsorship agreement stating that if the rights holder acts in a way that is contrary to the spirit of the Code, this will constitute a breach of contract.

23. We would note that voluntary measures do not impose a cost on the taxpayer.

The Scotch Whisky Association