Introduction

The role of the Law Society of Scotland (the Society) is to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Law Society of Scotland’s Licensing Law and Consumer Law Sub-Committees have considered the Scottish Parliament’s Health and Sport Committee’s call for evidence upon the general principles of the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill introduced into the Scottish Parliament on 1 April 2015 by Doctor Richard Simpson MSP and have the following general comments.

General Comments

We note that this is another set of proposed amendments to alcohol licensing and again stress the difficulties that licensing board clerks and licensing practitioners are encountering in the many and varied changes to the Licensing (Scotland) Act 2005 since its enactment.

This brings into question the requirement for a consolidating Act.

The Licensing (Scotland) Act 2005 is at present overly complex with a significant amount of amendments and many issues of interpretation to such an extent that the original ethos and guiding principles of the 2005 Act have, in the opinion of the Society, largely been lost.

We believe that, in this regard, a consolidating Act would be useful as it would afford an opportunity to scrutinise the effectiveness of various aspects of alcohol licensing and avoid new proposals simply being added onto the Act without proper evidence as to their requirement.

In such a consolidation, perhaps further consideration should be given to the more practical and pressing matters of transfers, surrenders and site only applications which we most recently raised in our response to the Air Weapons and Licensing (Scotland) Bill.

With reference to the questions contained in the call for evidence, we should like to respond as follows.

Question 1: Do you support the Bill as a whole

We responded to the consultation paper issued by both Doctor Richard Simpson MSP and Graeme Pearson MSP entitled “Shifting the Culture- A Proposal for a Bill to bring forward measures to help change culture in relation to alcohol in Scotland” in May 2012.

At that time, we referred to our response to the Scottish Government’s consultation paper entitled “Changing Scotland’s Relationship with Alcohol: A Discussion Paper on our Strategic Approach” in September 2008. We also stated that we welcomed any initiative
brought forward in order to improve the nation’s health and to encourage both the sensible retailing and consumption of alcohol.

We remain of this view.

We support the policy intent of the bill to promote public health and reduce alcohol related offending, but question whether the provisions contained in the bill will achieve this policy intent.

**Question 2: Do you support particular provision in the Bill**

We refer to our response at question 1 above.

**Question 3: Do you have concerns about particular provisions in the Bill?**

Yes, for the following reasons:

**Section 1: Minimum price of packages containing more than one alcoholic product.**

We consider that this appears to be very narrow in its scope. This section proposes to add a restriction on the discounted sale of larger packages of alcohol where a smaller package of the same alcoholic product is also on sale and in the same proportions. It does not apply where there are non-alcoholic items in the package.

Accordingly, the provision is limited in its effect and can be easily circumvented.

It will also mean that there would be a patchwork of provisions on packages either containing more than one alcoholic product or a combination of alcoholic and non-alcoholic products.

Also, as this provision would only apply where a comparable smaller package is for sale on the premises, then it may have the adverse effect of encouraging a person to buy a larger measure of alcohol than the person had otherwise intended to buy.

**Section 2: Alcoholic drinks containing caffeine.**

This provision inserts a new paragraph 8A into Schedule 3 of the Licensing (Scotland) Act 2005 where ready mixed alcoholic drinks containing caffeine at a level greater as such amount as may be prescribed must not be sold on the premises.

There is no information as to what the level of caffeine should be as this would only be determined in terms of Section 2 (5) of the bill by Scottish Ministers no later than 12 months after the date on which the bill receives Royal Assent.

This would no doubt be of concern to the manufacturers of alcoholic drinks containing caffeine whose products must not be sold as a mandatory condition either of a premises licence or of an occasional licence.

We therefore question why such an important provision should be subject to secondary legislation.
We also refer to Directive 98/34/EC(Technical Standards and Regulations Directive), which aims to prevent new technical barriers to be created and note that the European Commission should be made aware of this provision.

Furthermore, with particular reference to section 2 (4) of the Bill whereby the combined contents of the containers are to be treated as if supplied in a single sealed container, this brings into focus the issue of e.g. vodka and red bull being sold in isolation and thereafter consumed together.

Section 3: Age discrimination: Off-sales

This proposal would prevent Boards having an ability to impose a condition on an off-sales licence to the effect that sales should be restricted to persons of “a higher age” than 21.

We question whether this is in practice an issue.

We note that, at present, Boards can vary conditions of premises licences to the effect that they can prevent those aged 18-20 from purchasing alcohol for consumption off the premises.

We also note that such an age related condition imposed upon an individual premises or occasional licence has usually been imposed as a result of there having been a number of “under age sales involved”.

We question whether such a measure would meet the Licensing Boards’ obligations in terms of the Equality Act 2010.

Section 4: Container marking: off-sales

We believe that this provision has the potential to confuse the respective roles of Licensing Boards and the police given that, at section 27B (5) of the 2005 Act as inserted by section 4 of the bill, the variation of conditions by which a premises licence in respect of off-sales premises in its area would be subject to a container marking condition can only be made on a written request from the chief constable.

Moreover, we note at Section 27 (C) that if the Board doesn’t comply with the chief constable’s request, it must give written reasons to the chief constable.

While normally it is good practice for Licensing Boards to be accountable for their decisions, we consider it to be highly inappropriate for the police to be in a position to hold Licensing Boards to account in this manner.

We highlight that, from a practical point of view, even if alcohol can be traced back to a particular shop, it does not indicate how the alcohol fell into the hands of those who were causing a nuisance or were under age or whatever the case may be.

It should be noted that in many cases the alcohol may well have been acquired legally from the shop and has come into the possession of under 18’s sometime thereafter.

We therefore question whether this proposal could ever operate satisfactorily in practice.
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.

We note that there appears not to be any restriction on delegating this decision.

We also note that there is no mention of whether a premises licence holder is to be notified before the premises licence is varied in this way.

Since the premises licence is to be varied, the premises licence holder should therefore be given an opportunity to make comment before such a decision is taken.

It appears to us that the premises licence holder will have to carry out the container marking condition on the instructions of the police.

We also note that, should a premises licence review result, then there would have to be evidence of culpability on the part of the licence holder for grounds of review to be established and action taken.

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

We believe that there is at present no direct correlation between the lack of a Community Council in a Licensing Board’s area and notification of neighbours.

We also believe that this provision would be unduly burdensome for Licensing Boards in terms of resources and costs.

An obligation to intimate applications to all premises within 50 metres of the applicant, in some towns and city centres could easily reach into the thousands given density of population. Boards would of course have to resource this and pay the postage or try to ensure hand delivery.

We also note that the notification period is to be increased from 21 to 42 days which will delay applications being put to Board meetings for a decision to be made.

This may again prove unduly burdensome for businesses in the process of applying for premises licences, particularly where a provisional premises licence application would have to be deferred until a Board meeting after the 42 day period.

We also question why there should be an increase to 42 days given that planning applications only require 21 days for representations to be submitted and, in our view, Community Councils appear to engage themselves more readily in the planning application process than in the licensing process.

Section 6: Ban on alcohol advertising near schools etc.

We note that this provision makes it an offence knowingly to cause or permit the display of an alcohol advertisement in a prohibited place within a restricted area subject to the exceptions at section 7.
We also note that this provision will apply not only to licensed premises but to the public in general and accordingly question how such a provision could be meaningfully enforced and what publicity would be given to a new offence of this nature. In particular, we question how the restricted area’s 200 metres boundaries are to be determined and how, in the event of a new school, nursery, crèche or children’s play area being opened, existing businesses in the restricted area are to be notified.

This provision would also appear to prevent the display of alcohol advertisements at large scale events such as pop/rock concerts being held in public parks which also contain children’s play areas.

In terms of section 6 (3) of the Bill, “advertisement” means any word, letter, image, mark, light, model, placard, board, notice, screen, awning, blind, flag, device, representation container or package in the nature of, and employed wholly or partly for the purpose of, advertisement or promotion and “alcohol advertisement” means an advertisement promoting alcohol.

Given this wide definition it would appear in our view that an offence would be committed e.g. where a poster referring to a sporting event sponsored by a drinks company was displayed within the window of a private dwellinghouse in a restricted area or 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.

We also note that, curiously, this provision would criminalise behaviour that would not be a criminal offence on licensed premises which would potentially be subject to a premises licence review, not a report to the procurator fiscal.

We also highlight a lack of consistency given the definition of ‘alcohol advertisement’ appears to differ from the existing definition of ‘drinks promotion’ contained in Paragraph 13 of Schedule 3 to the 2005 Act.

Section 8: Advertising within licensed premises.

This provision would only apply where off-sales premises form part of larger retail premises. This provision appears to assume that the whole of the premises is not licensed.

We note that most supermarkets have a red line boundary for their premises that encompasses the whole public parts of the premises, albeit the alcohol display areas are much smaller, but the licensed premises are effectively the whole of the supermarket.

This provision would therefore appear not to apply to most supermarkets.

In any event we note that the provisions contained at Section 8 are already covered by paragraph 13 of Schedule 3 to the 2005 Act as amended in that drinks promotions are limited to taking place within a single accessible or inaccessible alcohol area or a tasting room.
Section 9: Advertising at sporting and cultural events.

We question the enforceability of this offence given that the provision will apply to sports and cultural events, many of which are of course run by volunteers who would not be aware of this new offence.

We also question the meaning of “intended audience” at section 9 (1) (b) of the Bill. Could this include television audiences etc.?

This proposal also has the potential to negatively impact upon the opportunity for sports clubs and theatre groups both amateur and professional to obtain sponsorship from the alcohol trade and accordingly lose an element of funding which they may rely upon to operate.

We accordingly question the enforceability of this proposed offence.

Section 15: Drinking banning orders

We question the requirement for this provision at section 15 of the Bill given that Exclusion Orders can already be imposed by the court in terms of section 94 of the Licensing (Scotland) Act 2005 where a person convicted of a violent offence on or in the immediate vicinity of any licensed premises can be prohibited from entering the licensed premises concerned or such other licensed premises as the court may specify in the order except with the appropriate consent.

More generally, the Sheriff can, on the application of a relevant authority, make an Anti-Social Behaviour Order (ASBO) in respect of a person who is at least 12 years of age, all in terms of section 4 of the Anti-Social Behaviour etc. (Scotland) Act 2004.

From a practical point of view, we question how such drinking banning orders will be enforced and how premises licence holders are to know who has had a drinking banning order imposed. We note specifically that while banning orders from senior football grounds are at present available in terms of the Police, Public Order and Criminal Justice (Scotland) Act 2006, there are only 42 senior football grounds in Scotland compared with thousands of licensed premises.

We call into question the resources of the police and public authorities to apply for, obtain and monitor these orders.

We also note that, in terms of Section 15(3) of the bill, a drinking banning order will only apply where there is a premise 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.

With further reference to Section 94 of the 2005 Act, it is our understanding that this section is rarely invoked.

Also, in more general terms it is also our understanding that the offence provisions at Part 8 of 2005 Act are rarely invoked and we accordingly suggest that these provisions and a greater use of Exclusion Orders may obviate the need for this new provision.
Section 16: Duration of Drinking Banning Orders

We again note the requirement for resources required to set up the approved course which can be provided for in terms of section 16 (3) of the Bill.

Section 31: Offences Involving Alcohol: Notification of Offender’s GP

We refer to our consultation response where we stated that GPs would no doubt already be aware of a patient’s state of health as a result of misuse of alcohol and question the requirement for this provision.

We also question whether such a provision is a necessary public interference with an individual’s right to privacy and accordingly whether it is of any public benefit. In any event, the GP is under no obligation whatsoever to do anything with the information contained within Section 31(3) of the Bill.

We further note that this proposal was also contained in the consultation and did not receive much support.

Question 3: How will the particular provisions in the bill fit with your work, or the work of your organisation?

Not applicable.

Question 4: Will the Bill have financial or resource implications for you or your organisation?

No.

Question 5: Do you have any other comments for suggestions relevant to the Bill?

No.

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The Law Society of Scotland
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