Air Weapons and Licensing (Scotland) Bill Call for Evidence – The Co-operative Response

The UK Consumer Co-operative Movement comprises 16 retail Co-operative Societies. The Co-operative Group is the largest Co-operative Society, operating as a consumer co-operative and comprises a family of businesses whose activities range from food to finance and from farms to funerals. Food retailing is core to our activities, including in Scotland, providing almost half of the Group's turnover. The Co-operative Group operates Food stores at the heart of hundreds of communities across Scotland from Lockerbie to Lerwick and from Castlebay to Coldstream. Similarly we have partner societies operating in different areas of Scotland such as Scotmid Co-operative Society, Clydebank Co-operative Society, and a number of small community co-ops that we support in the most remote areas of Scotland. Part of the retail mix in Co-operative Food stores is the sale of alcohol products. Therefore we wish to comment only on the proposals contained within the draft Bill as they relate to alcohol licensing.

When the Scottish Government launched its Further Options for Alcohol Licensing consultation in December 2012 it promised an “open and productive discussion” and it was in this atmosphere that we responded to the consultation. We agreed with the Scottish Government that due to the recent rapid pace of alcohol licencing reform in Scotland there are aspects of the licensing regime that have become unbalanced; we felt that it was important that the retail co-operative societies trading in Scotland responded constructively. Some of the proposals put forward at that time were ones we felt that we could support. Certain other proposals caused us greater concern and so we stated our apprehensions to ensure that any further legislative reform did not have the potential to create new problems.

On the whole the proposals put forward are ones which we feel we can support. The one exception to this is the return of the ‘fit and proper person’ test. This is not something we are particularly keen to see re-introduced as in our experience as multiple licensees this was purely an administrative hurdle through which we were required to jump and which did not add anything to the promotion of the licensing objectives.

28. In what ways will the Bill’s provisions on alcohol licensing allow for reductions in crime and the preservation of public order?

29. Are there any other measures which should be taken to assist in the reduction of crime and the preservation of public order?

30. In what ways will the provisions in the Bill enhance the licensing objectives set out in the Licensing (Scotland) Act 2005?

Proxy purchase
We believe that the biggest positive impact will come with criminalising the supply of alcohol to a person under 18 for consumption in a public place. We supported this proposal when we responded to the consultation.

Retailers have worked hard to incorporate age verification schemes into their businesses. The Co-operative and other retailers in the Retail of Alcohol Standards Group were already operating a Challenge 25 policy across their Scottish
estates before this became a mandatory condition following the Alcohol etc (Scotland) Act 2010. These policies have reduced the amount of alcohol bought from retailers by underage individuals. A report by NHS Health Scotland in July 2012 revealed a reduction in direct sales of alcohol to young people. However, it also noted that the reduction in alcohol sales to underage individuals has not necessarily translated into a reduction in alcohol consumption by underage individuals: “Despite [this]… no-one reported a decrease in young people’s alcohol consumption at this time.” (Section 4.1.2).

The explanation for this disparity between sales and consumption is due to ‘proxy purchasing’. The Serve Legal and Plymouth University ‘Checked Out’ Report published in June 2012 revealed (Section 7) that over half of all underage drinkers now obtain their alcohol through family and friends. Their research showed that supermarkets and convenience stores are now ranked as the very last places from which underage drinkers would attempt to obtain alcohol. As the off-trade has become more rigorous in its policing of sales, underage drinkers have resorted to ‘proxy purchases’ – getting over-age individuals to legally buy alcohol and then sell or gift it on. The Co-operative, as a responsible retailer, has incorporated guidance on how to spot proxy purchases into its training for all front-line store staff. This cannot be infallible however, particularly when the underage individual does not come anywhere near the store.

The recent ‘Rising to the Challenge’ report assessing the performance of the Challenge 25 scheme’s operation looked specifically at the issue of proxy purchasing. It concluded that “Given the complex nature of proxy sales, it is important that the trade, trading standards, the police and the Home Office look to work ever more closely on dealing with the issue.”

Retailers now identify proxy purchase as the biggest challenge they face in preventing alcohol getting into the hands of underage individuals. Last year the Association of Convenience Stores commissioned the think tank Demos to look at three problems relating to alcohol, one of which was underage drinking. The resulting ‘Sobering Up’ report concluded that tackling proxy purchasing requires targeting parents and adults. To drive the message home that facilitating underage drinking is not to be tolerated the report recommended radical action in this area including ‘social shaming’ and alcohol-related community sentences targeted at those purchasing alcohol for children.

Currently all the penalties for proxy purchasing are targeted at the retailer rather than the proxy purchaser. We are happy to support the law being amended so that the truly guilty – those that fraudulently purchase alcohol with the intent of passing it on to an under-18 – can be prosecuted in such cases. However, any new law must be utilised; at present we do not believe that existing powers are effectively enforced.

Our one concern is that by focusing solely on consumption in a public place the proposals do not go far enough. As the Scottish Government has previously stated, drinking in Scotland is a societal issue. Education is probably the key means of changing Scotland’s drinking habits. With this in mind we would encourage a blanket ban on supplying alcohol to under-18s. We believe that it is a stronger and clearer message than the one hedged with exemptions proposed in the Bill. When, in July last year, as part of their support for the East Edinburgh Community Alcohol Partnership, the police seized alcohol possessed by underage individuals they stated: “we believe a number of adults continue to assist underage drinking through the proxy purchase of alcohol. Friends, family members and other persons over the age of 18 are reminded that it is an offence to buy or supply anyone underage with alcohol.” Even under the new proposals this statement will not be accurate.

The present Bill states that supplying alcohol for consumption by a child will not be an offence as long as it is consumed anywhere other than a ‘public place’. If it is to be consumed at home no offence is committed. This will make it harder to police proxy purchase in store – not only do staff members have to make a judgement about whether the alcohol purchased is on behalf of an under-18 but they also have to make a judgement about the location in which it will be consumed.

‘Young People’
In the same light we approve of the licensing objective “to protect children from harm” being amended to include ‘young people’. Legally, a child is defined as “a person under the age of 16”. However, it is also illegal to sell alcohol to 16 and 17-year-olds; a person aged 16 or 17 is defined as a “young person”. This means that should alcohol be sold to an individual aged 16 or 17 the law will have been broken, but not the licensing objective.

The current mandatory condition creates the paradoxical situation where the law might have been broken, but the licensing objective has not. We have heard of at least one instance where a retailer has successfully defended itself at a hearing on the basis that, in selling alcohol to a 17-year-old, they had not contravened the terms of the alcohol licence. As all licensees should be operating a Challenge 25 policy amending the mandatory condition to close this loophole should not cause responsible retailers any extra cost or difficulty – assuming an appropriate phrase can be agreed. This is an example of eliminating contradictions in the licensing regime which impose no extra regulatory burden upon licence-holders.

It makes sense to harmonise the mandatory objective with the statutory age restriction. The more comprehensive a standard, the easier it is to understand and prosecute. However we would need absolute clarity upon the definition of a “young person” – in official statistics this term often covers all individuals over 16 but under 25. It would create genuine difficulties if the licensing objective were amended to make retailers consider the potential impact on consumers aged over 18 who were legally entitled to purchase alcohol. Doing so would also contravene the Equality Act.

31. In what ways will the re-introduction of the “fit and proper person” test assist with the implementation of the licensing objectives set out in the 2005 act?

We are not convinced that the re-introduction of the ‘fit and proper person’ test will positively affect compliance with the licensing objectives. In our consultation submission we stated that we did not see any particular need to re-introduce this test. We continue to believe that the current requirements of the personal licence application and licence review processes are effective enough to support the licensing objectives. Our objections are based upon the amount of non-productive time required to attend any required interviews rather than fears that our applicants will fail the test. Despite the subjective nature of the phrase we cannot recall any applicant nominated by either The Co-operative Group or Scotmid falling foul of such a test. The statement in the Policy Memorandum (paragraph 137) that “A definition of ‘fit and proper’ is not necessary” does concern us, however. From a natural law standpoint we would prefer any new legislation to clearly define what activities or associations would result in an applicant being deemed to be not ‘fit and proper’.

Whilst the test was officially removed by the 2005 Act we have found that in practice it never went away. In certain areas the police still call in potential personal licence holders for face-to-face interviews before they are content to let the application go through. In Edinburgh, for example, the police invite all applicants for a 5-10 minute interview at force headquarters at Fettes Avenue with a licensing officer. This is something they used to do under the 1976 Act when a new premises manager was nominated. The questions asked are basic and will have been covered by the personal licence qualification training – we do not believe that they add anything extra to enforcement of the licensing objectives.

While we cannot see any advantages from this activity to ensure the objectives are upheld, they are time-consuming. Personal licence holders have to be released from their day-job (with cover provided) and travel across to the headquarters for what is often just a five minute interview before they can return. This can take up to two hours out of store even in a relatively small area like Edinburgh.

We would be concerned if the fit and proper person test meant that this sort of interview was expected for all premises managers and all personal licence-holders. Before the 2005 Act came into effect most forces would interview a new premises manager. We never saw this as a particularly useful expenditure of the police’s time. In all cases for The Co-
operative Group and Scotmid a new store premises manager will already have a qualification as a personal licence holder and in most cases they will already be a premises manager moving to a new store. We cannot recall any occasions where such interviews brought to light any new information to suggest that our applicant was not a ‘fit and proper person’, despite the subjective nature of that phrase. Obviously we will only have one premises licence per licenced store but we will have more personal licence holders employed. As stated above, it currently takes up to two hours for a member of staff to get across a relatively small area like Edinburgh and back; considering the stores we operate in some of the remotest communities in Scotland we have significant fears that if every proposed premises managers or personal licence-holders were called in to interview by the police or Licensing Board we could lose up to an entire day’s work – or more in the case of island stores reliant on ferry crossings – for each staff member for the sake of a 5-10 minute conversation. The end result is that operators of licenced premises could potentially try to reduce this non-productive time by reducing the number of personal licence holders they employ. This would tend to undermine the licensing objectives rather than support them.

32. Have there been any unintended consequences arising from the 2005 Act, for example, in rural areas or the economic regeneration of areas?

The Licensing (Scotland) Act 2005 introduced the concept of ‘overprovision’. Since its introduction co-operative societies in Scotland have raised objections about the application of the policy. We favour concrete action being taken to identify and deal with problem purveyors of alcohol, but oppose sweeping generalisations that tar responsible retailers with the same brush as the irresponsible. Overprovision assessments create increased administrative cost and burden to licensees and thereby stifle competition and local growth.

We believe that assessments of overprovision on health grounds are only valid if two conditions are met:

- a clear causal link between the number of alcohol licences in an area and resultant health problems can be shown
- that the alcohol consumed by those with alcohol-related health problems was purchased primarily in that area.

We do not believe that either of these conditions are met.

No causal link can be established between the number of licences locally and health problems. Alcohol Focus claimed to have found a ‘moderate’ relationship between off-licence density and alcohol harms in young people in England in their [One on every corner](https://www.gov.uk/government/publications/one-on-every-corner) report, but to make this claim they had to specifically exclude London where no such trend was evident. Even amongst the areas they saw fit to quote there are clear anomalies. For example, Malvern Hills had 26.7 off-licences per 100,000 population whereas Tunbridge Wells had almost twice as many (48.3), and yet Tunbridge Wells saw far fewer alcohol specific under-18 hospital admissions (48.4 per 100,000 population) over a two-year period than Malvern Hills (82.4). Moreover there is an assumption that all licences are equally harmful, despite the amount of alcohol purchased on a daily basis varying enormously between an out-of-town hypermarket and a local corner shop or between a ‘vertical drinking’ chain pub and a small bistro.

Nor is it possible to demonstrate in most cases that harm is caused by alcohol purchased within the local area. The consultation document acknowledged this fact (“it is very difficult, if not impossible in most cases to make a causal link between where alcohol is sold and where it is consumed”, paragraph 97). The 2011 [submission to the Scottish Government](https://www.gov.uk/government/publications/one-on-every-corner) for the Alcohol (Minimum Pricing) (Scotland) Bill by West Dunbartonshire Licensing Board et al made the point that whereas 31% of the respondents to a 2008 survey in Whitecrook bought alcohol at a local convenience store 85% bought it from a supermarket outwith the local area: “the problems occurred in Whitecrook but the alcohol was bought in Clydebank Central”. The 2010 Statement of Licensing Policy for West Dunbartonshire states that “persons in West Dunbartonshire, wishing to obtain alcohol from off-licences will travel up to two miles across sub-localities to purchase alcohol” (section 28).
They will also cross local authority boundaries. Since the introduction of the multi-buy ban in 2011 there have been reports that consumers resident near the English border have simply been crossing to England to buy alcohol – should minimum unit pricing be introduced in Scotland and not in England we would expect to see this trend continue. As a result health or crime problems caused by alcohol bought in England would be felt in Scotland.

What overprovision does do is stifle local investment and competition. Overprovision assumes that alcohol consumption is led by availability – the more premises there are selling alcohol the more consumption there will be. We would instead argue that both consumption and availability is led by demand – consumers expect to be able to complete a full shopping trip in just one location. This is why the number of independent stand-alone greengrocers, butchers and bakers has plummeted over the last thirty years. Consumers expect to be able to buy all their fruit and vegetables, their meat, their bread and all the rest of their shopping under one roof. This includes alcohol. If a consumer is not able to buy a bottle of wine in the same place as the rest of their evening meal they will travel elsewhere. It does not therefore make commercial sense for a convenience store or supermarket to invest in a community unless they can sell alcohol as part of that offer. Where alcohol licences are restricted retailers are reluctant to invest in that area, stifling job-creation and competition. High street vacancy rates in Scotland already stand at 14.9% according to the Local Data Company. Safe from competition, existing retailers are at risk of becoming complacent and letting standards slip.

Bearing these reservations in mind, we do not support the concept of overprovision unless clear evidence meeting the two conditions specified above can be demonstrated. Extending the locality to cover the entire Board area, as proposed in Section 54, would compound the existing problems. It would mean that pockets of perceived problems would blight wide areas where no new investment or competition was allowed in. For example, during the Highland Licensing Board's assessment of overprovision, NHS Highland identified that twelve of Highland’s 22 wards showed rates of alcohol-related hospitalisation significantly above the Scottish average. If this was translated into an assessment that the entire Highland area was overprovided it would mean that Ullapool, for instance, would be starved of increased retail opportunities when the nearest area NHS Highland had identified as a problem was Cromarty Firth over 40 miles away. Indeed, Cromarty Firth’s neighbouring ward, the Black Isle, would face the same issue, despite the fact that Black Isle’s rate of hospitalisation for alcohol-related conditions was 20% lower than the Scottish average (877.4 per 100,000 as opposed to 1,088). In these circumstances, in effect, a ‘surrender’ policy for licences would be established. Our experience of the surrender policy in Northern Ireland is that it disproportionately disadvantages independent and smaller retailers and has retarded investment and economic growth. For overprovision assessments to have any utility at all they need to be based on clear, hard evidence. Having localities covering the entire area will only dilute any impact and effectiveness from measures introduced to address specific local issues. We therefore believe that locality boundaries should be drawn as tightly as possible.

We believe that the proposal to count extensions in opening hours would be an over-reaction to a very small issue. An extension of trading hours would in general only be likely to marginally increase alcohol provision. Even then an increase in the hours within which alcohol can be purchased would not necessarily mean that more alcohol would be consumed: since licensing hours were relaxed in England and Wales in 2005 alcohol consumption has fallen by over 17%. Just as importantly we feel that it should be noted that the hours in which alcohol can be sold are already restricted by laws and licence conditions. Making this subject to an overprovision assessment would duplicate other, existing, regulations. The proposal is simply that a Board “may” have regard to licensed hours with no greater detail about what that would entail. For example, if an off-licenced premises were to apply to extend its licensed hours from 21:00 to 22:00 would all licenced premises be taken into account to determine whether the locality was overprovided or only those that were licenced between 21:00 and 22:00?

Again we are, on balance, opposed to including increases in capacity under the overprovision rules. Capacity in this sense would either be the number of individuals the premises can contain in the on-trade, or the size of the alcohol sales area in the on-trade. However in practice such increases would not dramatically increase the amount of alcohol being sold. It would
be strange if an extra half a metre of shelving in a convenience store was counted as just as big a threat to an overprovision assessment as a new out-of-town hypermarket. Yet under this proposal each would be subject to exactly the same test. Retailers frequently remerchandise and refit stores to best meet consumer needs. Most of the time these will just involve ‘micro-space’: keeping the existing shelving and general space splits but moving products around on the shelves. Sometimes, however, to meet consumer demand, to fit in with new brand ideas or to roll out improved formats ‘macro-space’ revisions are necessary. These may involve changing old shelves for new, increasing or decreasing the splits in store space between different categories, or gutting and refitting the store entirely. Extensions to the selling area might be necessary under macro-space refits. Creating a general presumption that no increase in alcohol capacity would be approved in certain areas would almost certainly mean that existing retailers would not invest in modernising and refitting stores in those areas. This will create negative impressions of those areas, as the existing stores become tired and shabby. As alcohol-related health harms or crimes are predominantly associated with more deprived areas it is most likely that it is more deprived areas will be covered by overprovision assessments. It would be a shame if they were deprived of modernised or newly-refitted retail opportunities.

33. Which, if any, types of spent relevant offences should be required to be disclosed and what do you think the benefits of disclosure will be?

34. Do you have any other comments to make on the alcohol licensing aspects of the Bill?

We support the proposals in Section 57 for the removal of the prohibition on any individual who has had a personal licence revoked due to a failure to prove to the Licensing Board that they have undergone refresher training from reapplying for a new personal licence within five years. We are confident that we have the information to hand to ensure that personal licence-holders we employ will be scheduled to undertake refresher training in advance of the deadline. However there can be occasions where it is not possible for the individual to sit training at the appropriate time – due to maternity leave or illness for example. Preventing licence-holders from reapplying for a five year period would only have the effect of weakening the field of employees responsible for upholding the licensing objectives by removing long-standing licence-holders. Barring them from taking responsibility for the authorisation of sales of alcohol would be counter-intuitive. We are glad to see this rule revoked.

Likewise the increased notice that a Licensing Board must give prior to the expiry date of a personal licence and the extension of the period within which it is possible to apply for a renewal will help licence holders plan around maternity leave or ongoing illness.