



**THE LAW SOCIETY  
of SCOTLAND**

[www.lawscot.org.uk](http://www.lawscot.org.uk)

**Shifting the Culture – A proposal for a Bill to bring forward measures to help change culture in relation to alcohol in Scotland**

**A Members' Bill Consultation by Dr Richard Simpson MSP and Graeme Pearson MSP**

**The Law Society of Scotland's Response/Written Evidence**

**June 2012**

## **INTRODUCTION**

The Law Society of Scotland aims 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.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and outwith the solicitor profession.

The Law Society of Scotland's Licensing Law Sub-Committee (the Sub-Committee) welcomes the opportunity to respond to the Consultation issued by Dr Richard Simpson MSP and Graeme Pearson MSP on proposals for a Bill to bring forward measures to help change culture in relation to alcohol in Scotland and should like to respond as follows.

The Sub-Committee has been actively involved in responding to both the Scottish Government and the Scottish Parliament with comments upon both the general principles of the Licensing (Scotland) Act 2005 and subsequent regulations.

The Sub-Committee also responded to the Scottish Government's consultation paper entitled "Changing Scotland's relationship with alcohol: a discussion paper on our strategic approach in September 2008.

The Sub-Committee stated at that time that it welcomed any initiative brought forward in order to improve the nation's health and to encourage both the sensible retailing and consumption of alcohol.

The Law Society of Scotland remains of this view.

The Sub-Committee responded to the Scottish Parliament's Health and Sport Committee's call for written evidence in January 2010 upon the general principles of the Alcohol, etc. (Scotland) Bill and provided the Scottish Parliament's Health and Sport Committee with oral evidence at a sitting of that Committee on 17 March 2010 at which John Loudon, the Society's Licensing Law Sub-Committee Convener at the time, and Jim McLean, the Society's Competition Law Sub-Committee Convener, provided the Committee with oral evidence.

The Society also responded to the Scottish Parliament's Health and Sport Committee's call for written evidence upon the general principles of the Alcohol (Minimum Pricing) (Scotland) Bill in December 2011.

Jim McLean and Alan McCreadie, Secretary to the Society's Licensing Law Sub-Committee, provided oral evidence upon the general principles of the Bill at a meeting of the Health and Sport Committee held in the Scottish Parliament on 31 January 2012.

In essence, the Society stated that, in fixing a minimum unit price, not only should compatibility with EC duty directives be taken into account, but also legal issues with regard to the free movement of alcohol.

It was suggested by Jim McLean that, ultimately, the Court of Justice of the European Union could decide that "complicated arrangements" with regard to minimum pricing were too problematic in relation to inter-member state trade and that it would just "not allow them". However, Mr McLean also suggested that the court could alternatively conclude that the Scottish Government had managed to find a way of targeting a particular pattern of consumption that was a particular problem and that there was evidence that the policy of minimum pricing of alcohol may achieve the Government's objectives.

The Sub-Committee notes from the terms of this consultation that it considered many more measures in order to bring about a cultural shift with regard to Scotland's relationship with alcohol.

In response to the questions contained within the consultation paper, the Sub-Committee should like to respond as follows:-

1. *Do you think the further restriction on quantity discounting proposed would be beneficial? What disadvantages might there be? Do you think that there is a case for going further?*

The Sub-Committee notes that Section 2 of the Alcohol, etc. (Scotland) Act 2010 (Minimum price of packages containing more than one alcoholic product) received cross-party support at Bill stage.

The Sub-Committee, in terms of its written evidence to the Scottish Parliament's Health and Sport Committee expressed a concern with regard to this measure in that this measure relates to consumer protection and competition law and is accordingly reserved to the United Kingdom Parliament. The Society, in its response, expressed concern that Section 2 has the potential to create two separate markets within the United Kingdom for alcoholic products and they may lead to shoppers purchasing in England and Wales in order to take advantage of savings not available in Scotland.

The Sub-Committee does note, however, that this proposal, in extending a quantity discount ban, to ensure that it is no longer possible to sell different sized multipacks of a particular alcoholic product at differential prices per item, takes into account one of the unintended consequences of Section 2 as referred to by the Sub-Committee in its written evidence in that Section 2, as enacted only applies where each alcoholic product is for sale on the premises separately and accordingly may, conversely, encourage a person to buy a larger measure of alcohol than the person had otherwise intended to buy and may therefore be considered an irresponsible drinks promotion in terms of Paragraph 8(2)(e) of the Licensing (Scotland) Act 2005.

In all the circumstances, the Sub-Committee questions whether the tightening of multipack pricing would serve any great purpose.

2. *Do you believe that Ministers should be required to issue guidance on these two licensing objectives?*

The Sub-Committee notes that, in terms of Section 145 of the Licensing (Scotland) Act 2005 that Scottish Ministers may by order make any incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this act.

The Society has no particular view on a requirement to issue guidance on “the promotion of public health” and “the protection of children from harm” being two of the five licensing objectives referred to in Section 4(1) of the 2005 Act.

The Sub-Committee notes, however, that the Scottish Government is, at present, in the process of reviewing guidance on the Licensing (Scotland) Act 2005.

3. *Do you believe that Ministers should be required to report to the Parliament once per session, and what should such a report be required to cover?*

The Sub-Committee refers to its answer at 2. above.

4. *Do you believe that the proposed restrictions on advertising are proportionate or necessary?*

The Sub-Committee refers to its response to the Scottish Government consultation in 2008 entitled “Changing Scotland’s relationship with alcohol: a discussion paper on our strategic approach” when it stated that, in relation to restrictions on alcohol advertising, the Sub-Committee supports such restrictions on the basis that it should lead to responsible drinking.

The Sub-Committee notes that the Portman Group on 11 May 2012 produced a consultation response to its code of practice on the naming, packaging and promotion of alcoholic drinks and that, in particular, the Group expects to amend its code in the communication of alcoholic strength, sponsorship and the use of images of under 25s in alcohol marketing. The Sub-Committee, while recognising that alcohol should clearly be marketed and sponsored responsibly, is of the view that a wider role in the education of children requires to be adopted and that, rather than the de-normalising of alcohol, the demystification of alcohol should be the aim in order that, upon majority, a responsible approach can be made.

5. *Are there further measures you feel should be introduced?*

The Sub-Committee refers to its answer at 4. above.

6. *Do you believe that there should be restrictions on pre-fixed caffeinated alcohol products? If so, do you believe the proposed caffeine limit of 158 milligrams/litre on pre-mixed products?*

The Sub-Committee notes that concern has been expressed about caffeinated alcohol but notes that any restriction on the retail of caffeinated alcohol could clearly not apply to the sale of caffeinated drinks and alcoholic drinks together on licensed premises for mixing by the customer and accordingly questions the effect of such a restriction.

7. *Is there a role for further alcohol education and public information campaigns in changing alcohol culture as stated in the general comments?*

The Sub-Committee supports any initiative in this regard.

8. *Would it be beneficial for Ministers to be made directly accountable to the Parliament for their policy in this area as proposed?*

The Sub-Committee believes that on the basis of a statement of policy on alcohol education and public information, that such a report should be laid by Ministers before Parliament.

9. *Do you support a ban on Licensing Boards requiring off-licences to restrict sales on age grounds alone, or are there circumstances where this could be justifiable?*

The Sub-Committee refers to its response to the general principles of the Alcohol, etc. (Scotland) Bill. At that time, the Sub-Committee stated that a question arose as to how a Board can properly and reasonably identify and pinpoint any locality within its area where off-sales to under 21s are having a detrimental impact and, in particular, it would be difficult for a Board to make such a statement upon information which does not disclose that anti-social behaviour is emanating from those persons under 21 to whom alcohol has been sold.

The Society, at that time, also suggested that if such a condition were to be imposed upon licensed premises in respect of off-sales, then it could be attached as a condition following upon a review of a premises licence in terms of Section 39 of the Act.

Further, the Sub-Committee stated at the time the practical difficulty of the imposition of premises licences with both an on-sales and off-sales facility and accordingly this would bring into place two age limits dependent on whether alcohol is sold for consumption on or off the premises.

10. *Do you believe that community neighbours should be consulted and their views taken into account when licences are being renewed or extended or when special licences are being issued?*

The Sub-Committee notes that Section 12 of the Licensing (Scotland) Act 1976 provided for the publication in the local newspapers of lists of applications to be considered at a forthcoming meeting of the Licensing Board.

The Sub-Committee further notes the provisions at Section 21 of the Licensing (Scotland) Act 2005 and suggests that this is sufficient notification of application of a premises licence.

The Sub-Committee also notes that, at present, “any person” may apply for a premises licence review application in terms of Section 36 of the Licensing (Scotland) Act 2005.

11. *Do you believe that the New Zealand model is an appropriate one to emulate, if not, what changes should be made?*

The Sub-Committee refers to its answer at 10. above.

12. *Do you believe that there is a role for a statutory national licensing forum in addition to existing local forums? If so, then – should it be funded through licensing fees of central Scottish Government funding? What would its membership be, and who would appoint them? To whom would it be accountable?*

The Sub-Committee believes that there is a role for a statutory national licensing forum in addition to existing local forums on the basis that all relevant stakeholders were represented.

Roles for such a forum could be to set licensing qualifications and also to take overall responsibility for Board member training and personal licence holder training.



13. *Is there sufficient evidence to justify legislation allowing Licensing Boards to make participation in a bottle tagging scheme a licence condition, or are current voluntary arrangements adequate?*

Whether or not the bottle tagging becomes a mandatory condition of premises licences, the Sub-Committee believes there are certain practicable difficulties with regard to enforcement of such a condition.

14. *Should Fine Diversion be made available, on a statutory basis, throughout Scotland, if the further pilot is successful?*

The Sub-Committee identifies certain practical issues with regard to whether or not alcohol was a factor in the offending behaviour and that whether the alleged offender should be accepting the offer of an anti social behaviour fixed penalty notice without the benefit of legal advice.

15. *Do you believe that Arrest Referral schemes for alcohol (as well as drugs) should be a statutory requirement within each Community Justice Authority area?*

The Sub-Committee foresees no practical issues with regard to this proposal on the basis that it is entirely a matter for the individual as to whether he or she wishes to participate in the scheme.

16. *Should drinking banning orders be introduced in Scotland? If so, should they be piloted in one Sheriffdom?*

The Sub-Committee would respectfully suggest that the success of such orders in England and Wales, in terms of the Violent Crime Reduction Act 2006 is fully evaluated before a similar proposal is considered in Scotland.

17. *Do you believe extending DTTOs to become ADTTOs would add value to the existing range of disposals? What differences of context between drugs and alcohol would need to be taken into account?*

The Sub-Committee notes that Community Pay Back Orders allow courts to impose drug treatment requirements and/or alcohol treatment requirements and, accordingly, is unsure as to whether this proposal would in fact add to the range of disposals available to sheriffs.

18. *Do you believe that notifying a GP about a patient's conviction for an alcohol-related offence would be beneficial? Should it apply only in cases of conviction or in other circumstances as well?*

No. The Sub-Committee is concerned that such information be made available to GPs who, in many circumstances would no doubt already be aware of a patient's state of health as a result of misuse of alcohol.



**For further information and alternative formats please contact:**

Tel: 0131 226 7411

Email: [lawreform@lawscot.org.uk](mailto:lawreform@lawscot.org.uk)

The Law Society of Scotland

26 Drumsheugh Gardens

Edinburgh

EH3 7YR

[www.lawscot.org.uk](http://www.lawscot.org.uk)