

Shifting the Culture: A proposal for a bill to bring forward measures to help change culture in relation to alcohol in Scotland

As part of a comprehensive approach, the proposed Bill is about tackling both health issues and revising the criminal justice system to properly focus on those whose drinking is causing problems for themselves and others. This consultation focuses on further legislative measures we feel are necessary and even urgent. Please can you consider the proposals and questions and respond where you feel you can. These will then be collated

Part One: Health

Tightening Quantity Discount Ban in Alcohol etc. (Scotland) Act 2010	Questions
<p>Under the proposed Bill, it would no longer be possible to sell different-sized multipacks of a particular alcoholic product at differential prices-per-item. In other words, even if a store only sells 4-packs and 12-packs of a particular beer (in 500ml cans), and does not also sell the cans individually, the 12-pack would have be sold for at least three times the price of the 4-pack.</p> <p>We believe this will close a significant loophole in the current law.</p>	<p>1. Do you think the further restriction on quantity discounting proposed would be beneficial? What disadvantages might there be? Do you think there is a case for going further?</p> <p>Yes, this ADP thinks that this further restriction is helpful. Further restrictions e.g. pricing of 375/750 bottles of wine may be contentious given, it will be argued, differentials in costs and returns from less common volumes.</p>
Public Health Interest and Child Protection	Questions
<p>Adding “the promotion of public health” and “the protection of children from harm” to licensing objectives was one of the principal recommendations of the Nicholson Report and was brought into effect in the Licensing (Scotland) Act 2005.</p> <p>This proposal would require the Scottish Government to issue detailed guidance on the application of these two licensing objectives and to report to the Parliament. This report would require demonstrating how these objectives were being applied in each Board and any difficulties or barriers to tackling over-provision of alcohol.</p>	<p>Q2) Do you believe that Ministers should be required to issue guidance on these two licensing objectives?</p> <p>Yes, this ADP believes guidance would be helpful to support implementation of the objectives at a local level. We would welcome the opportunity for ADPs to contribute to the development of such guidance.</p> <p>Q3) 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?</p> <p>This information could be covered in the existing annual report arrangements for ADPs/SOA’s. Further reporting requirements from local areas would need careful consideration.</p>
Restrictions on Alcohol Marketing	Questions
<p>The objective here is to restrict the advertising of alcoholic drinks, particularly in contexts where they are likely to be seen by children. The Bill cannot restrict advertising on radio or television (as broadcasting is a reserved matter). However, we believe that there should be a complete ban on all advertising of alcoholic drinks in public places (e.g. on billboards, hoardings, bus-shelters, buses and other vehicles), as all such forms of advertising will routinely be viewed by children as well as adults. The ban would not extend to places where the public is only permitted on payment (such as a football ground or other sports venue).</p>	<p>Q4) Do you believe that the proposed restrictions on advertising are proportionate or necessary?</p> <p>This ADP believes that this proposal is in keeping with the evidence from the WHO re effective interventions and therefore would support it.</p> <p>Q5) Are there further measures you feel should be introduced?</p> <p>We would support a more extensive ban on advertising.</p>

<p>In addition, we propose to ban the advertising of alcoholic drinks through the medium of filmed advertisements shown during cinema presentations to which children are admitted. In practice, this would mean that drinks advertisements could be shown on-screen only in connection with 18-certificate films</p>	
<p>Caffeine Limit in Pre-mixed Alcohol Products</p>	<p>Questions</p>
<p>Our proposal is to restrict the strength of caffeine in pre-mixed alcoholic products to 150mg per litre, based on the Danish limit, with the aim of encouraging reformulation of such products and prevent the proliferation of new ones. This would only apply restrictions to the retail of such products and would not be a total ban. For example, we do not believe it would be practical or proportionate to attempt to ban the sale of caffeinated drinks and alcoholic drinks together in licensed premises (for mixing by the customer).</p>	<p>Q6) Do you believe that there should be restrictions on pre-mixed caffeinated alcohol products? If so do you believe the proposed caffeine limit of 150mg/litre on pre-mixed products is appropriate? Yes</p>
<p>Alcohol Education</p>	<p>Questions</p>
<p>Dr Simpson ended the “just say no” approach in favour of one where pupils were to be properly informed of risks such as through the “Know the Score” campaign. Every school was to have a drugs and alcohol education programme.</p> <p>Public educational programmes are not highly rated for effect by the World Health Organisation (WHO). However, there is some international evidence that targeted interventions can be successful when combined with other measures, particularly if they have clearly defined outcomes and are aimed at changing attitudes as well as providing factual information.</p> <p>Successful programmes, particularly those aimed at parents, were reported to the Health and Sport Committee during its visit to Finland and France as part of its scrutiny of the Alcohol etc. (Scotland) Bill 2010.</p> <p>Under our proposals, the Scottish Government would be required to publish, near the beginning of each session of the Parliament, a statement of its policy on alcohol education and public information. There could also be a requirement about what the statement would have to include – for example, an outline of the measures proposed for educating children and young people about the risks associated with excessive alcohol consumption.</p>	<p>Q7) Is there a role for further alcohol education and public information campaigns in changing alcohol culture? Yes, cultural change is unlikely to result purely from legislation. Educational Programmes in relation to any change in legislation would be helpful as well as more general drugs and alcohol education for school pupils. These programmes, as well as allowing children access to accurate information, are an opportunity to discuss cultural attitudes and support young people experiencing concerns relating to drugs and alcohol to seek individual support.</p> <p>Q8) Would it be beneficial for Ministers to be made directly accountable to the Parliament for their policy in this area, as proposed? It is useful to have some national guidance in order to prevent duplication of work in local areas. In terms of reporting care again should be given to ensure increased requirements at local level are given due consideration.</p>

Alcohol Discrimination Against Under-21 Year Olds in Off-Sales	Questions
<p>Labour successfully amended the 2010 Act to prevent Licensing Boards, discriminating against those aged between 18 and 21 when imposing or varying licence conditions.</p> <p>Since Labour's amendment was passed, the Scottish Government has provided Licensing Boards with guidance outlining that such conditions can still be applied on a case-by-case basis (i.e. to individual premises licences). We therefore propose to extend the current restriction (which applies only at the general level of a Licensing Board's policy statement) so that it would also prevent a Licensing Board from requiring any off-licence, as a condition of its premises licence, to sell only to a restricted adult age- group. This would not, of course, prevent off-licences themselves adopting a policy of selling only to over-21s and being licensed accordingly. We believe that test purchasing, challenge 25 and powers for Local Authorities to ban drinking in public places and to disperse those who continue to do so is a sufficient set of powers to tackle underage drinking</p>	<p>Q9) 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?</p> <p>No</p>
Community Involvement in Licensing Decisions	Questions
<p>Under our proposal, a similar requirement to that in New Zealand would be introduced in Scotland which would require every premises licence to be subject to an initial time-limit after which it would require to be renewed. (At present, there is no such time-limit, and a premises licence continues in effect indefinitely unless one of a number of trigger events occurs, such as the death of the licence-holder or the revocation of the licence.)</p> <p>Renewal applications (unlike initial applications) would then be made subject to a requirement to advertise the application locally (for example, in a local newspaper and/or by notice attached to the premises), so that local people would be aware of it and of their right to object within a specified period. Any objections would require be considered and taking into account by the Licensing Board. Renewal could be semi-automatic if there were no objections.</p> <p>Similar requirements (to advertise locally and consider objections) could also be applied in the case of other applications (for example, to vary licences). We would also welcome suggestions about how we could give local people a meaningful opportunity to be consulted and have their views considered without necessarily requiring all premises licences to be renewed every few years</p>	<p>Q10) 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?</p> <p>This ADP is of the opinion that community involvement is valuable but has concerns about the impact of this model versus the resource investment required. Locally we are collecting data to help inform our licensing board's decision making and this will contain information about the impact of licensing on services. An informed consultation would require communities to have access to such information,</p> <p>Q11) Do you believe that the New Zealand model is an appropriate one to emulate, if not what, changes should be made?</p> <p>More evidence about the impact of these changes would be required before any onerous increase in responsibilities for consultation were introduced.</p>

National Licensing Forum	Questions
<p>This national body was disbanded in 2009, having been thought to have served its purpose. Alcohol Focus Scotland receives funding from the Scottish Government to carry out some of the former body's functions including to provide support to local licensing forums. However we believe that there is merit in re-establishing a national licensing body to commission co-ordinated training, advice and monitoring based on best practice, and the provision of information and data to the Government's advisory body on alcohol, the Parliament and local authorities.</p> <p>We believe a national forum should be set within a legislative framework. It should report annually to the Scottish Parliament. We welcome views on how the costs of the new body should be met (for example, through a share of licence fee revenue).</p>	<p>Q12) Do you believe that there is a role for a statutory National Licensing Forum in addition to the existing local forums? If so:</p> <p>This ADP believes a National Licensing Forum would be useful in order to share good practice and strategic issues as well as the roles described. We are not clear that there is a requirement for this to be set within a legislative framework.</p> <ul style="list-style-type: none"> - Should it be funded through licensing fees or central Scottish Government funding? <p>This would be reasonable</p> <ul style="list-style-type: none"> - What would its membership be, and who would appoint them? <p>The model we propose would have membership from local Licensing Board Fora, support from SG, Alcohol Focus Scotland and Legislative Support?</p> <ul style="list-style-type: none"> - To whom would it be accountable? <ul style="list-style-type: none"> - What would its functions be?

Part two: Justice

The aim of this part of the proposed Bill is to ensure a comprehensive and integrated approach to tackling alcohol misuse within Scotland.

For too many people our justice system is a revolving door. We need to break the vicious circle of excessive drinking, offending and punishment by addressing underlying causes of the offending to the benefit of all concerned.

Alcohol Bottle Tagging	Questions
<p>As a joint initiative between Dundee City Council and Tayside Police, this scheme involved licensees using an ultraviolet pen to mark the bottles they sold with a code specific to their premises. Tayside police officers, community wardens and licensing standards officers were issued with UV key fobs to enable them to read the codes on any bottles confiscated from youths. That then allowed the bottles to be traced back to the store where the alcohol had originally been purchased. This was a voluntary scheme which included the co-operation of the majority of the area's off-sales premises. A review of the pilot concluded that it had been successful and it was recommended that it should be rolled out to the rest of Dundee. The Dundee wide scheme was only voluntary and only certain drinks were marked. These are the drinks</p>	<p>Q13) 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?</p> <p>The evidence cited is not enough to consider adopting this within the legislation at this stage.</p>

<p>considered to be most popular with underage drinkers, i.e. tonic wines, cider, alcopops and fizzy wine.</p> <p>We believe there may be a case for further amending the 2005 Act so that requiring participation in bottle tagging schemes is automatically a basis on which Licensing Boards may vary licence conditions. It should be possible for the Board, having consulted the police, to require participation in this way either by varying licence conditions for individual premises, all premises of a particular type or in a particular area.</p>	
<p>Alcohol Fine Diversion.</p>	<p>Questions</p>
<p>Alcohol fine diversion is an early intervention aimed at addressing binge drinking and associated anti-social behaviour. Offenders who would otherwise be liable for a fixed penalty fine and whose offending behaviour appears to be related to alcohol consumption are offered the alternative of participating in a programme about the dangers and consequences of alcohol misuse. The target audience is not the hardened criminal or the chronic alcohol misuser; it is the binge drinker.</p> <p>The proposal is that this scheme should be further piloted, to ascertain if it is equally cost effective in an urban area, underpinned by legislation and then rolled out to every area.</p>	<p>Q14) Should Fine Diversion be made available, on a statutory basis, throughout Scotland, if the further pilot is successful?</p> <p>While sympathetic with this approach the evidence is far from clear as yet and this ADP cannot support this proposal given the lack of clarity about the nature of the pilot and success criteria.</p>
<p>Alcohol Arrest Referral</p>	<p>Questions</p>
<p>This section of the Bill will require an Arrest Referral scheme to be operated by each Community Justice Authority within its area. As arrest referral schemes generally rely on the participation of a range of partner organisations (some in the voluntary sector), the Bill will not be prescriptive about the scope or nature of any scheme. However, the Bill will require the CJA, or any successor organisation, to make adequate provision for such schemes. It would be left to each individual arrested whether to participate in the scheme, recognising in particular that some will be much more easily able to do so than others (depending, for example, on where they live in relation to where programmes are delivered).</p>	<p>Q15) Do you believe that Arrest Referral schemes for Alcohol (as well as Drugs) should be a statutory requirement within each Community Justice Authority area?</p> <p>Arrest referral schemes are a positive way of ensuring early intervention and reducing reoffending. We would support this proposal but recognise the challenges of providing this service in a rural area.</p>
<p>Drinking Banning Orders</p>	<p>Questions</p>
<p>Using these Orders, a court would be able to impose a personal ban on drinking in specified places as a form of disposal in cases where a person is convicted of an alcohol related offence. Drinking banning orders (DBOs) are already available in England and Wales DBOs can be put in place, for no</p>	<p>Q16) Should drinking banning orders be introduced in Scotland? If so should they be piloted in one Sheriffdom?</p> <p>At this stage the evidence is not clear to the impact of this measures in England. We would be concerned about the potential impact on individuals</p>

<p>more than two years, to prevent an individual from entering premises licensed to sell alcohol (pubs, off-licences and private clubs). The court has discretion as to how the ban is applied in each case – for example, by specifying particular premises, or by identifying premises by category or by geographical area Home Office guidance suggests that DBOs may not be suitable for people who are vulnerable and suffering from drug or alcohol dependency, or mental health problems.</p> <p>Our proposal is to make provision for Drinking Banning Orders in Scotland on a very similar basis to the existing legislation in England and Wales</p>	<p>within vulnerable groups and how this would be managed. We would also have concern about what appears to be a very large scope and range of measures that could be applied and how we could ensure people were treated equally across Scotland. Also, although the publicising of such orders does not intend to ‘name and shame’ this is a risk, as is the potential for this to become a ‘badge of honour’.</p>
Alcohol and Drug Treatment and Testing Orders (ADTTO)	
<p>We now wish to introduce a measure to amend the current legislation on DTTOs to turn them into ADTTOs – Alcohol and Drug Treatment and Testing Orders.</p> <p>The Community Payback Orders introduced by the Criminal Justice and Licensing (Scotland) Act 2010 allow courts to impose drug treatment requirements and/or alcohol treatment requirements on offenders, requiring them to undertake appropriate treatment for their drug or alcohol dependency.⁹³ However the treatment is not specified and the sheriff does not easily remain involved in management of the ‘case’. Our proposal would build on the successful DTTOs to ensure that an equivalent regime would also apply to alcohol.</p> <p>The proposal partly arises from the work in Glasgow where supervised dispensing of Disulfiram by pharmacists has proved beneficial⁹⁴. Disulfiram supports the client in abstinence since taking alcohol on top of the drug results in very unpleasant side effects. But adding alcohol to the DTTO also acknowledges that the continuing involvement of a sheriff in the on-going case management can be of critical importance in ensuring success levels greater than the one-off involvement which generally occurs with a community payback order.</p>	<p>Q17) Do you believe extending DTTOs to become ADTTOs would add value to the existing range of disposal? What differences of context between drugs and alcohol would need to be taken into account?</p> <p>The evidence cited is not extensive. It may be the case that alcohol related crimes are more likely to occur in the absence of a dependency issue than drug related crimes therefore an ADTTO may not be appropriate. Locally we have low numbers of DTTO’s issued so it is hard to assess the impact of such an extension. However, given that an individual may be experiencing both alcohol and drug problems this proposal may support a more appropriate intervention on the assumption that we can evidence a reduction in reoffending rates.</p> <p>It is important to allow time for CPOs to bed in and to evaluate the management of and the outcomes from the alcohol and drug treatment requirements over a longer period. The same issues will apply around compelling people into treatment with serious consequences for failing to comply when the prevailing ethos for substance misuse services is voluntary contact. In terms of reducing re-offending, the rates for DTTO over a two year period are high and are consistently higher than custody and other community based disposals. DTTO requires significant resources so we should be very cautious about allocating any additional resources without proper research and evidence, and in fact there may be an argument to review the effectiveness of DTTO</p>
Alcohol Offences Information Sharing	
<p>One of the most significant failures of current legislation and practice is in the communication between different agencies. This is seen at a number of different levels of problem drinking. There is currently no requirement on any part of the criminal justice system to inform GPs when a patient is convicted of an offence involving alcohol. We propose a new requirement on any court which convicts a person for an offence in which (in the court’s opinion)</p>	<p>Q18) 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?</p> <p>Currently any GP’s which receive payment for performing ABI’s are funded via ADP ringfenced funding. This is not a universal arrangement.</p>

<p>alcohol was a significant contributory factor, to notify the person's GP accordingly. We would consider extending this to other circumstances involving alcohol-related offending behaviour, but which do not involve a conviction – for example, the issuing of a fixed penalty notice or fiscal fine, a warning letter from the procurator fiscal, or just arrest and detention by the police (where the person is subsequently released without charge). In these situations, the police or other authority could also be obliged to report the circumstances to the person's GP . The requirement to report to a particular GP would only arise if the offender was prepared to provide his or her GP's details voluntarily; if this was not provided, the obligation would be to inform all GPs' surgeries in the area in which the offender is resident. There would be no obligation on the GP to take any particular action in response to this notification, but we believe it would at least ensure that the GP was alerted to a potential health problem that he or she might otherwise not be aware of, and that this would make it more likely that the offender would receive appropriate advice or treatment for their alcohol dependency.</p>	<p>It is not clear that the reference cited in support of this proposal can be directly linked to Alcohol Offences Information Sharing. Without specific reference it is difficult to evaluate the merit of this proposal.</p>
--	--

Final Comments

The focus on Justice within this document, while welcomed to stimulate discussion, could be interpreted as a shift towards a zero tolerance culture to alcohol related problems. It needs to be acknowledged that culture change is not achievable purely through legislation.

Fiona Doig
on behalf of Borders ADP