

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

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 340 companies producing, importing, exporting, transporting and selling wines and spirits. Our members include retailers who between them are responsible for thousands of licences. We work with our members to promote the responsible production, marketing and sale of alcohol.

The Scottish Retail Consortium (SRC) represents the broad spectrum of Scottish retailing, from large multiples and department stores to smaller independents, selling a wide selection of food and non-food items through many types of outlet.

The Scottish Grocers' Federation (SGF) is the trade association for the Scottish Convenience Store Sector. It is the authoritative voice of the Scottish convenience trade with nearly 2,000 stores in membership including groups such as SPAR Scotland, Booker Premier, KeyStore, Nisa, Costcutter, McColl's, the Co-operative Group and Scotmid.

We have provided comment on each of the proposals contained in the consultation below. However, it is important to recognise that in recent years the licensing regime in Scotland has been subject to a number of changes. The Alcohol (Scotland) Act 2010 introduced a number of significant changes to licensing in Scotland and the Alcohol (Minimum Pricing) (Scotland) Bill will bring further changes in 2013. We therefore believe that it is important that a period of time is given to fully assess the impact of these changes before any further legislative measures are considered. The constant changes to Licensing in Scotland have proved costly to businesses in updating their systems and ensuring staff are fully trained in the latest requirements.

Please find our response to each of the proposals below:

Part 1: Health

1. Tightening the quantity discount ban in the Alcohol etc. (Scotland) Act 2010

When the Alcohol etc. (Scotland) Act 2010 was debated in parliament we highlighted the unintended consequences of the quantity discounts ban proposed in the Act as follows:

“We believe that this section creates a perverse incentive for retailers not to stock individual cans/ bottles of particular products, and only to sell larger multi-packs. It is therefore counter-productive to the objective which it is trying to achieve.”

“As it will not apply to English (especially online) sales, it would add to other incentives in the Bill for trade to switch there, to the cost of the Scottish retail sector and economy.”¹

¹ WSTA/SRC Stage 3 briefing, Alcohol etc (Scotland) Bill 2010: <http://www.wsta.co.uk/images/stories/Scotland/alcohol-bill-stage3-briefing-final.pdf>

Our understanding is that the quantity discounts ban introduced by the 2010 Act was designed to work in conjunction with minimum unit pricing of alcohol. As the parliament has passed the Alcohol (Minimum Pricing) (Scotland) Act the pricing of multi-packs will now have to comply with the minimum unit pricing requirements of the new Act. We therefore do not believe that further changes to the quantity discount ban are necessary.

2. Public Health Interest & Child Protection

Whilst we understand that some Licensing Boards have had difficulty in interpreting aspects of the 2005 Act including the 'promotion of public health' objective, we do not believe that additional guidance is necessarily the key to addressing this issue. Issuing additional guidance would be at odds with the principles of local responsibility and decision-making which are enshrined in the 2005 Act and in the licensing system. However, we do believe that the proposal to establish a National Licensing Forum could help Licensing Boards to achieve greater consistency of interpretation and to share best practice in interpreting the Act. Our members are active in their support of national and local initiatives to promote good health. Our retail members provide good value on a range of healthy products, fruit and vegetables in store – including promoting low alcohol alternatives to alcohol.

A requirement on Ministers to report to parliament about the effect of the 2005 Licensing Act would aid transparency about its impact and effectiveness. However, this needs to be carefully balanced against the risk that it could create an additional bureaucratic burden on Licensing Boards that often have limited resources within a Local Authority.

We also have concerns about requiring the Scottish Government to formally respond to the Alcohol Focus Scotland report 'Re-thinking Alcohol Licensing'. The Scottish Government already substantially funds Alcohol Focus Scotland, so we do not believe that it is necessary for them to formally respond to its report.

3. Restriction on Alcohol Marketing

There is little evidence to suggest that further restrictions to Alcohol Advertising in the UK would be a proportionate or fair response. The advertising and marketing of alcohol is already highly regulated in the UK through the Committee of Advertising Practice Code (CAP)², and self-regulation through the Portman Group. Producers and retailers comply with a number of regulatory regimes in order to market and sell alcoholic products.

The consultation cites the example of the Loi Evin legislation in France however there are questions about the efficacy of this legislation. For example, the President of the French National Association of Addiction and Alcoholism (ANPAA) concluded his analysis of Loi Evin that no effect on alcohol consumption could be established.³ In Norway, where there is also a long-standing and rigorously enforced ban on alcohol advertising, the National Statistics Office figures show that alcohol sales increased by 27.7% between 2000 and 2010.⁴

² <http://www.cap.org.uk/The-Codes/CAP-Code/CAP-Code-pdf-versions.aspx>

³ The 'Loi Evin': a French exception, Dr Alain Rigaud, President Association Nationale de Prevention en Alcoologie et Addictologie (ANPAA), 1999

⁴ [Statistisk Sentralbyrå](#) – Norwegian Statistics Office, 2011

In addition, as part of the Responsibility Deal a commitment has been made by the industry as follows; *“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.”*⁵ The Outdoor Media Centre (OMC) has developed a proximity test for this pledge and has conducted two impromptu surveys, the results of which have been very positive.

The consultation refers to advertising in the cinema as a particular problem. The Cinema Advertising Association has a range of data which demonstrate that the CAP rules work and that children are not being ‘over-exposed’ to alcohol adverts at the cinema, particularly during school holidays. The CAA has put in place stringent pre-clearance procedures which go beyond the CAP code requirements to ensure that children are not over-exposed to cinema alcohol advertising.

5. Caffeine limit in pre-mixed alcohol products

There is no clear evidence to support a restriction on pre-mixed alcoholic drinks containing a caffeine level of 150 mg per litre or more. The consultation acknowledges that consumers could continue to purchase alcohol and caffeinated drinks to mix their own, potentially higher, caffeinated alcohol mixture. We believe that the legislative focus should be on dealing with problem drinkers, rather than banning specific alcoholic drinks. We also have concerns about replicating legislation from Denmark without any robust supporting evidence of the proposed impact in Scotland.

4. Alcohol Education

We share the concern highlighted in the consultation document that the Scottish Government’s alcohol misuse budget is being cut in real terms over the spending review period. In order to change the drinking culture in the UK we must give a far higher priority to education about alcohol and the dangers of misuse. We therefore welcome the proposals suggested to make greater use of alcohol education and public information campaigns in Scotland and to require the Government to report to parliament on their effectiveness. Education about alcohol should be a compulsory element of the school curriculum for children aged from 5 to 16. Alcohol education must be relevant to young people and should build on successful programmes already underway here and in other countries.

A good example of this is the Drinkaware In:tuition teaching resource for primary and secondary school children (aged 9 -14). The programme aims to build young people’s confidence, personal and social skills and help them explore how they make decisions and what might influence them. Whilst its theme is alcohol its focus is wider, addressing a range of relevant personal needs in an age sensitive way. The resource is inspired by and relies on proven international evidence⁶ that has been shown to be effective in preventing substance misuse and reducing alcohol misuse by 28-31%⁷.

⁵ <http://responsibilitydeal.dh.gov.uk/2012/02/03/a6-factsheet/>

⁶ The recent Cochrane Collaboration review of 53 school-based programmes provides new evidence that school-based initiatives can be effective and their impact on behaviour can be lasting. <http://www2.cochrane.org/reviews/en/ab009113.html>.

⁷ Unplugged is a European intervention strategy aimed at delaying alcohol, tobacco and drug initiation among adolescents. The EU-Dap study evaluated the outcome of the programme in 143 schools

Drinkaware's research shows the average age of the first unsupervised drink is just under 14 years old. Therefore, the transition from primary to secondary school is a critical time to influence young people's attitudes and behaviour towards alcohol.

Our members are committed to being part of the solution to addressing alcohol misuse, working with government and other stakeholders. Businesses can reach consumers to help them make informed choices about their consumption in ways that government cannot. The SRC, SGF and WSTA are members of the Scottish Government Alcohol Industry Partnership (SGAIP) and our members have supported public information campaigns such as those run by Drinkaware and Alcohol Awareness Week in Scotland. We are working through the SGAIP to examine how education and public information campaigns in Scotland can be enhanced.

Through voluntary donations, the industry supports Drinkaware, an independent, UK-wide charity which tackles alcohol misuse. It carries out a range of campaigning and educational work to equip people with the knowledge they need to make sensible choices about how much they drink. The Drinkaware website received 2.87 million unique visitors in 2011, an increase of 37% year on year, clearly establishing itself as the site to visit for factual advice about alcohol.

As part of the Public Health Responsibility Deal the industry is also developing a new pledge in support of well-evidenced alcohol prevention and education programmes for under 18s. We would be happy to supply more information about this work as the pledge progresses.

5. Alcohol discrimination against under 21 year olds in off-sales

We opposed the proposals put forward during the parliamentary debate of the Alcohol etc. (Scotland) Bill to give Licensing Boards powers to raise the age for the sale of alcohol to 21 in their entire area or specific localities within their area. We therefore support this proposal which would prevent any future attempts to make it a condition of a licence to sell only to those over the age of 21. We do welcome the clarification provided in the consultation that this would not prevent licence holders themselves from adopting a policy of selling only to over 21s.

The law sets the legal age for consumption and sale of alcohol at 18. To provide local Licensing Boards with the power to raise this to 21 as a licence condition could lead to confusion, not least for the retailers who will have to re-train staff and to the police in enforcing a range of different age limits depending on the licence conditions attached. It could also have an adverse effect on competition if a retailer cannot sell alcohol to those under the age of 21 as a condition of its licence but others can continue to comply with the law and make sales to those of 18 years and over. The challenge for retailers is to sell alcohol safely and responsibly that is why the Challenge 25 initiative, driven forward by retailers, has now been passed into law.

We welcome the recognition in the consultation of the effectiveness of the Community Alcohol Partnership approach such as that used in St Neots in Cambridgeshire. There are now more than 35 Community Alcohol Partnerships in operation across the UK, further information about these can be found here: <http://www.communityalcoholpartnerships.co.uk/>. We would welcome

across 7 countries involving more than 7,000 students. For the full reports, visit: http://www.eudap.net/Research_Publications.aspx.

further roll out of Community Alcohol Partnerships across Scotland and would welcome the opportunity to discuss with you how best this might be achieved.

6. Community involvement in Licensing decisions

We do not support the proposals for a time limit to be put on licences and for renewals to be advertised locally. Businesses require stability to operate effectively. If licensed premises are abiding by the law and fulfilling the requirements placed upon them as a condition of their licence we can see no reason why licences should be subject to review on a more regular basis. The 2005 Act makes provision for any person to object to a licence application and for any person to call for a review of a licence.

Costs for licence holders have increased dramatically over the last three years as result of the 2005 Act. We fear that this process would introduce uncertainty and additional costs for licence holders and further complicate the licensing system. In addition the resources of Licensing Boards are often stretched and it is questionable whether they would have the capacity to deal with frequent licensing renewals and advertising requirements put forward by this proposal. The Licensing Act creates opportunities for the public to engage in the licensing process through local licensing forums and by consulting with community councils and alcohol drug partnerships. We do not believe that the New Zealand example would significantly enhance this process.

7. National Licensing Forum

We support the recommendation to create a national licensing forum as it would provide a useful forum for Boards to share expertise and best practice and to improve consistency across the system, whilst maintaining responsibility and accountability at Local Authority level for licensing. We favour an approach which seeks to improve the consistency and accessibility of the existing legislation rather than one which seeks to add another layer of legislation to an already over-stretched and confusing system for Licensing Boards and licensees alike.

It would be appropriate for the Forum to be given some resource and support from central Government, given that it would be focussed on improving the workings of a major piece of national legislation, and for membership to include licence holders and trade bodies. The Nicholson Review made a number of recommendations about Licensing Forum membership and this would be a good starting point in devising the membership of a new national body.

Part 2: Justice

8. Alcohol bottle tagging

We do not believe that there is sufficient evidence to justify giving Licensing Boards powers to make participation in a bottle tagging scheme a licence condition. Bottle marking schemes put an undue burden on retailers in marking individual products and there is no evidence to demonstrate that it is an effective means of tackling underage sales.

Finding a discarded or confiscated bottle from a certain shop does not prove that an underage person bought alcohol from that shop. Recent figures show that young people increasingly get alcohol from other sources rather than buying it directly. Marked up alcohol in the possession

of a young person is as likely to have come from their parent's cupboard at home or to have been proxy purchased for them, as to have been bought by them directly. Current powers to prosecute those caught or attempting to proxy purchase alcohol on behalf of a minor are not being used enough and we believe that more needs to be done to enforce existing laws.

In 2008 (the last year for which figures are available) only 6% of 11-15 years olds who drank tried to buy it from a shop, while 22% were given alcohol by parents, 24% by friends and 18% asked someone else to buy their alcohol. The evidence gathered from the Dundee Pilot, found that *"off licences do take strict measures in tackling the sale of alcohol to youths. The most serious problem is agents buying on behalf of the youths"*⁸

Evidence from across the UK shows that bottle marking schemes are often trialed, at some cost to Local Authorities and the Police, and then set aside when they fail to produce results. In Sunderland, where bottle marking was carried out in a large number of stores, no enforcement action was taken against shops despite large amounts of alcohol being confiscated from young people. The only enforcement actions were against individuals for being drunk and disorderly, carrying an offensive weapon and proxy purchase of alcohol. Similarly, a three month pilot undertaken by the Metropolitan police in 2009 cost £5000 – the trial was not continued after the initial 3 month period.

9. Alcohol Fine Diversion / 11. Alcohol Arrest Referral

Whilst we do not have a view on these specific policy proposals we have always called for rigorous enforcement of existing regulations and legislation, coupled with increased focus on education to tackle alcohol misuse.

11. Drink Banning Orders (DBO)

We support the responsible production, sale and consumption of alcohol. Therefore, if an individual has been identified as causing alcohol related crime and disorderly behavior in a specific area it seems sensible to have powers to prevent them from entering premises licensed to sell alcohol. It is important to recognise that DBOs will apply to a minority of people. As in England, it will be important to ensure that clear procedures are put in to place to ensure that licensed premises are made aware of individuals who will be banned from entering the premises and the nature of the restrictions attached to the DBO. With all new legislation it is important to ensure it does not overlap with existing powers, for instance could existing Exclusion Order powers be used to similar effect?

12. Alcohol and Drug Treatment and Testing Orders (ADTTO)

We have no specific views on this proposal but if an offender chooses to be subject to an alcohol and drug testing order, as an alternative to a custodial sentence, this seems to be a sensible option to have available in Scotland.

⁸ <http://www.wsta.co.uk/images/stories/Scotland/report-to-lb-pilot.pdf>

13. Alcohol offences Information Sharing

Whilst we have no specific comments on this proposals care will need to be given to ensure that data protection legislation is adhered to when sharing confidential information about an individual. Similarly GPs may have a view on the impact sharing such information could have on the Doctor / Patient relationship if patients feel confidential information which they did not wish to be shared has been given to the GP without their permission.

Conclusion

We are committed to working with Government and policy makers to tackle alcohol misuse in Scotland and we have outlined in this submission the proposals that we believe to be workable in practice. However, it has to be acknowledged that alcohol policy and licensing legislation has been subject to considerable change in Scotland in recent years. We would therefore welcome a period where the recent legislative and regulatory changes are given time to bed in and for their effectiveness to be monitored and evaluated before any further changes are considered.

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