

The Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill

Call for Evidence Submission from the Scottish Grocers' Federation & the Association of Convenience Stores

The Scottish Grocers' Federation (SGF) and ACS (the Association of Convenience Stores) represents the interests of the convenience store industry in Scotland. Local convenience stores provide vital jobs and services to Scotland's communities. There are currently 5,545 convenience stores in Scotland, which provide over 42,000 jobs and have a total sales value of approximately £4billion per annum¹.

We welcome the opportunity to respond to the call for evidence and trust the Committee will find our submission helpful.

Do you support the Bill as a whole?

This Bill, if passed, would become the sixth primary piece of legislation to impact on licensing law in Scotland since 2009. It has now become extremely difficult for retailers (and indeed, all stakeholder groups, including the judiciary) to understand and comply with the complexity of licensing legislation.

It should also be recognised that since 2009 there have been more than 35 secondary statutory instruments enacted, 32 or so local Licensing Board policies put into effect and ongoing case law. All of which add to the day-to-day challenges retailers face when dealing with their responsibilities as licence holders.

We do not support the majority of the proposals included in the Bill and believe further changes to the licensing system will only add to the complexity of the existing system. Many of its proposals are either unworkable or come very close to simply duplicating existing legislation.

We urge the Health and Sport Committee to consider the implications that this Bill will have on small retailers, including their ability to invest and grow their businesses. We estimate that convenience retailers have invested £177 million² across the UK in the last three months, but regulation and restriction on sales can curb growth and deny communities other essential services.

Do you support particular provisions in the Bill?

We support the provision included in Chapter 1, Section 3 'Age Discrimination: off-sales', which aims to prohibit the ability that Boards currently have to increase the sale of alcohol in the off-trade from 18 to 21 years of age. The provision removes a potential form of age discrimination and will avoid creating inconsistencies for individual premises within a Licensing Board area.

Retailers have been heavily engaged with a number of age verification schemes, including 'Challenge 25'. The policy ensures that anyone that looks under 25 is challenged for proof of age. It is made up of several components including training,

¹ ACS Local Shop Report 2014

² ACS Investment Tracker May 2015

display of signage, staff support, record keeping, guidance and clarity on acceptable forms of ID.

'Challenge 25' was originally a retailer led voluntary initiative used to prevent underage sales to young people. The 'Challenge 25' scheme is now a mandatory part of the Scottish alcohol system and has been highly effective in reducing underage sales. It is a prime example of how retailers have led the way in preventing alcohol harm.

The number of prosecutions for purchasing alcohol for consumption by persons under 18 fell from 156 in 2009/10 to 64 in 2011/12 (Answer to written question in the Scottish Parliament S4W-13828).

Do you have concerns about particular provisions in the Bill?

We have concerns regarding four of the main provisions of the Bill which are listed below.

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

We accept that this is an attempt to close a notable loophole in the mandatory conditions introduced under the Alcohol etc (Scotland) Act 2010 to ban discounted multipack deals. SGF and other industry stakeholders did highlight this loophole to Scottish Government in 2010.

However, there may be an unintended consequence with this proposal, as retailers (particularly larger retailers) will only offer the larger multipacks of 10 or 12 for sale to customers. It is most likely that an unintended consequence of the 2010 Act was to tacitly encourage customers to 'upgrade'. It is no longer viable for retailers to offer single units of an alcoholic product for sale, as such, customers are generally being offered multipacks for most alcohol products and this trend may continue if this proposal is to be taken forward.

Additionally, given the pressures local authority licensing services are under (for example, in March 2014 Glasgow had only 4 full time equivalent Licensing Standards Officers to oversee 1,790 licensed premises³) the new regulations could not be enforced in an effective way.

2. Alcoholic drinks containing caffeine.

We do not believe that the alcohol licensing system is the right mechanism to tackle caffeine drinks and any associated implications. The Scottish Government should consider alternative measures to approach this issue instead of applying further mandatory conditions on licensees.

We would like to highlight that ready mixed caffeinated drinks only account for a tiny proportion of Scottish alcohol off-trade sales. Therefore, this proposal is likely to have limited impact on Scotland's relationship with alcohol and the Committee should consider whether powers for another mandatory condition are proportionate.

³ Scottish Liquor Licensing Statistics 2013-2014

There is not a robust body of independent evidence from the UK regarding any harmful effects of combining alcohol and caffeine. Specifically in relation to the Bill, insufficient evidence has been presented to justify this provision in either the accompanying explanatory notes or in the policy memorandum. Overall, caffeine has not been shown to have an effect on a person's self-assessment of their level of alcohol intoxication and we would urge the Committee not to support this provision.

It has been suggested that mixing alcohol with energy drinks or other caffeinated beverages may alter the awareness of (or 'mask') intoxication. The proposed reduction in subjective intoxication may have serious consequences by increasing the likelihood of engaging in potentially dangerous activities while intoxicated. However, a study by Benson *et al* (2014)⁴ found that even high caffeine doses do not produce this masking effect.

As part of this study, a literature review was conducted to collect all studies measuring subjective intoxication after the administration of alcohol with energy drinks (or with other caffeinated alcoholic drinks) compared with alcohol alone. The studies were critically reviewed and, where possible, included in a meta-analysis in order to determine whether masking exists after mixing alcohol with caffeinated beverages.

Sixteen articles were identified of which nine could be used for the meta-analysis. When including the higher caffeine dose studies, the meta-analysis revealed no significant masking effect. Similarly, when including the lower caffeine dose studies, no significant masking effect was found. Despite the large range of caffeine doses (2.0–5.5 mg/kg resulting in absolute levels of 46–383 mg) and alcohol levels 0.29–1.068 g/kg (resulting in blood alcohol concentration (BAC) from 0.032 to 0.12%) investigated, caffeine had no effect on the judgement of subjective intoxication.

Following a request from the European Commission, the European Food Safety Authority Panel (EFSA) on Dietetic Products, Nutrition and Allergies was asked to deliver a scientific opinion on the safety of caffeine, providing advice on caffeine intakes, from all dietary sources including alcohol. The EFSA delivered its opinion in May 2015⁵ and concluded:

“Alcohol consumption at doses up to about 0.65 g/kg bw, leading to a blood alcohol concentration of about 0.08 %, would not affect the safety of single doses of caffeine up to 200 mg from any dietary source, including “energy drinks”. Up to these levels of intake, caffeine is unlikely to mask the subjective perception of alcohol intoxication”.
(p.49)

The two research studies cited above are offered to the Committee to show that there is not a consensus on any putative harmful effects of a combination of alcohol and caffeine.

⁴ Benson, Sarah; Verster, Joris C.; Alford, Chris; Scholey, Andrew (2014). "Effects of mixing alcohol with caffeinated beverages on subjective intoxication: A systematic review and meta-analysis". *Neuroscience & Biobehavioural Reviews* **47**: 16–21

⁵ European Food Safety Authority: Scientific Opinion on the Safety of Caffeine, 27th May 2015

Without a robust evidence base, it would be unjustifiable to enforce a ban on a small group of alcoholic products which account for approximately 1% of the total volume of alcohol sales in Scotland.

3. Container Marking: off sales.

In our view, container marking has limited value in ensuring the responsible sale of alcohol or reducing alcohol-related harm. In all likelihood, a marked container will have been sold legally to an adult. If it is then consumed by a young person, it will have been passed to them by an 'agent' as part of a proxy purchase or by an older family member. Proxy purchasing is extremely difficult for retailers to identify and deal with.

Proxy purchasing remains the most prevalent source for young people to obtain alcohol, with 66% of 13-year-olds and 80% of 15-year-olds in Scotland obtaining alcohol from friends or relatives⁶. Proxy purchasing is a complex problem and can only be addressed by multi-agency partnership approaches at local level. Container marking provides no evidence of wrongdoing and should not be used by the police or Licensing Boards to target individual retailers.

This is most evident in the pilot of a container marking scheme by the Dundee Licensing Board. Following evidence presented by the Duncan Project Coordinator in support of the scheme, the Board asked the clerk to launch a consultation on the inclusion of a supplementary statement to the Board's Statement of Licensing Policy regarding container marking⁷. Yet, the Duncan Project Coordinator states in his own report in support of the scheme that:

"The main finding with this mini-pilot, which is no surprise, is 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, although through the bottle marking scheme it is hoped that staff would be more aware of this issue and that it would therefore be tackled and reduced."⁸

However, the report states:

"That this scheme will not all together stop agents buying alcohol unless a positive ID is found and thereafter an agent cautioned and charged."

There are a number of flaws with this proposal in practice. For example, the proposal neglects to consider that if a person underage is found drinking a marked container, it does not necessarily mean that that retailer has made an underage sale. Ultimately, the proposal fails to address that the most prevalent way of a person underage accessing alcohol is by proxy purchase or from home. For example, if a parent or friend had purchased the product legally from a retailer participating in the scheme and the person underage had taken it from their home to drink in public (34% of 13 year olds and 25% of 15 year olds in Scotland obtain alcohol from home with or without permission⁹), that premise would be traced despite that fact they had made a legitimate sale.

⁶ Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2013

⁷ [Dundee Licensing Board Minutes 21st April 2011](#)

⁸ [Bottle Marking Scheme Report to the Dundee Licensing Board by Duncan Project Coordinator](#)

⁹ Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2013

We would also like to point out to the Committee that alcohol products are given a unique barcode by manufacturers. This barcode cannot be altered by retailers and therefore cannot be used for container marking purposes. As such, all containers used for this purpose would have to be individually marked in store, with a sticker or pen whose marks only show up under UV light. It is simply not practical to mark every alcohol product in this way.

Action on Underage Sales

The Committee should consider the proactive work that has already been undertaken by the retail sector, including the originally retailer-led initiative, 'Challenge 25', which has been extremely effective at addressing the underage sale of alcohol. As a result, proxy (or agent) purchases are now the most common way for young people to obtain alcohol, which was recognised by the Chief Constable of Police Scotland in his 2014 report to all of Scotland's Licensing Boards.

The Scottish Grocers' Federation is a key partner in the East Edinburgh Community Alcohol Partnership. The Partnership is led by Police Scotland and in its development stage, a decision was taken not to include container marking as part of the Partnership's approach. Instead, it has proved more effective to develop good working relationships between the police and retailers, to focus on appropriate training and to work with other agencies including education, youth work and community safety.

4. Restrictions on alcohol advertising within licensed premises

This proposal seeks to create a new ban on alcohol advertising within licensed premises. It is our view that this proposal essentially duplicates the mandatory condition introduced at Schedule 3 Paragraph 13 (1B) of the 2005 Act, which prohibits "drinks' promotions" from taking place anywhere other than the designated alcohol display areas (as outlined in the premises operating plan). It is difficult to discern the distinction between 'advertising' and 'promotion', therefore this duplication (or overlap) may simply add to confusion for retailers, Licensing Standards Officers and the public, whilst adding further to the complexity of regulations in this area.

The proposals for restrictions on alcohol advertising within licensed premises fail to consider that alcohol advertising within a licensed premise is very complex. Not only do retailers already have to restrict their alcohol promotions to designated alcohol display areas, but the proposed regulations in this Bill would make it an offence to knowingly permit the display of alcohol advertisements in windows and in aisles that do not contain alcoholic products.

Of the 5,545 convenience stores in Scotland, 90% (4,991 of which are symbol & independent stores) are under 1,999 sq. ft, and 54% (2,994 of which are symbol & independent stores) are under 999 sq. ft¹⁰. Convenience retailers already have very limited space in their stores to promote, place, and advertise the products that they sell.

The proposed regulations do not take into consideration that retailers take advantage of all available space, which in some cases means that a retailer may stock alcohol in a

¹⁰ ACS Local Shop Report Scotland

restricted space, for example, next to a window, which they specifically place there because of the limited shelf/storage space in their store.

There are already significant restrictions in place that were introduced by the Licensing (Scotland) Act 2005, as highlighted above. We believe that further restrictions on alcohol advertising will only add further complexity to the regulations and cause confusion for retailers.

How will the particular provisions in the Bill fit with your work, or the work of your organisation?

Alcohol is an important sales category for retailers, on average representing 12.8% of convenience store sales, with 87% of convenience stores holding alcohol licences¹¹. Our members are committed to selling alcohol products responsibly and in compliance with the law. However, as mentioned above, the law is becoming ever more complex, hard to interpret and difficult to enforce effectively. There is an urgent need for a 'consolidated Act' which will bring together the disparate pieces of alcohol legislation in Scotland, which would provide much needed clarity for retailers.

The Committee should also consider that the industry has taken proactive action to prevent young people from accessing alcohol. The off-trade has led the way in the introduction of age verification schemes, such as 'Challenge 25', and partnership schemes such as Community Alcohol Partnerships. This has helped to significantly reduce the number of young people consuming alcohol; the Health and Social Care Information Centre identifies the number of 11-15 year olds that reported drinking alcohol in the past week has fallen from 25% in 2003 and 12% in 2011 to 9% in 2013¹².

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

Do you have any other comments or suggestions relevant to the Bill?

77% of shops in the convenience sector are owned and operated by small business owners or 'independents'. It is a highly entrepreneurial sector, one in five has established their business within the last five years, and more than 57% work over 50 hours per week¹³. These statistics demonstrate the importance of cutting red tape for the owners and operators of these businesses and to ensure the continued growth of this sector. Entrepreneurs are significantly hampered by complex administrative burdens, including licensing applications and consequential licensing conditions.

In the last quarter alone, the convenience store sector invested £176,786,924¹⁴ into the growth of their business. This figure demonstrates the importance of encouraging growth in the sector. We urge the Committee to consider the implications of posing further licensing conditions and regulations on the growth and investment of the convenience sector, retailers are less likely to open a store in area which restricts their alcohol licence, whether it be by trading hours, product selection or product placement, which

¹¹ ACS Local Shop Report 2014

¹² [HSCIC Smoking, drinking and drug use among young people in England in 2013](#)

¹³ ACS Local Shop Report 2014

¹⁴ ACS Investment Tracker May 2015

restricts their ability to grow. In Scotland, vacancy rates remain high at 13.7%¹⁵, and therefore we urge the Committee to reconsider the impact further regulations on alcohol licensing would have on high street investment.

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¹⁵ [Local Data Company and University of Stirling December 2014](#)