INTRODUCTION

1. This document relates to the Alcohol etc. (Scotland) Bill introduced in the Scottish Parliament on 25 November 2009. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 34–EN.

OVERVIEW OF THE BILL

2. The Scottish Government considers the Bill will help reduce alcohol consumption in Scotland and reduce the impact that alcohol misuse and overconsumption has on public health, public services, productivity, and the economy as a whole. Each of the measures set out in this Bill should be seen as part of the wider strategic approach to tackling alcohol misuse set out in Changing Scotland’s Relationship with Alcohol: A Framework for Action. The measures in the Bill concern:

- minimum pricing to protect and improve public health by reducing alcohol consumption
- further restrictions on off-sales promotions and promotional activity
- a requirement for an age verification policy.
- provisions concerning the modification of licence conditions
- provisions in respect of assessing the impact of off-sales to people under 21
- provisions in respect of a social responsibility levy

BACKGROUND

3. Industry sales data shows that enough alcohol was sold in Scotland in each of the last three years for which figures are available to enable every man and woman over 16 to exceed the sensible male weekly guideline on each and every week. Drinking above the Chief Medical Officers’ recommended guidelines increases the risk of lasting health damage and there is clear evidence that increased consumption over the last 20 to 30 years is driving increased harm.

1 [http://www.scotland.gov.uk/Publications/2009/03/04144703/0](http://www.scotland.gov.uk/Publications/2009/03/04144703/0)
2 Data supplied to the Scottish Government by The Nielsen Company (formerly AC Nielsen) [http://www.scotland.gov.uk/Topics/Health/health/Alcohol/resources/nielson-data](http://www.scotland.gov.uk/Topics/Health/health/Alcohol/resources/nielson-data)
4. There were over 42,000 hospital discharges in 2007-08\(^3\) due to alcohol related illness and injury, and mortality as a direct result of alcohol has more than doubled since the early 1990s\(^4\). New research also estimates that alcohol is a contributory factor in 1 in 20 deaths in Scotland with a quarter of male deaths and a fifth of female deaths in the 35 to 44 year old age group being alcohol attributable. It is now estimated that one Scot dies every three hours as a result of alcohol misuse\(^5\). Scotland has one of the fastest growing rates of chronic liver disease and cirrhosis in the world, leading the Chief Medical Officer to add alcoholic liver disease to the list of “big killers”, alongside heart disease, stroke and cancer. Life expectancy in some parts of Scotland is falling way short of life expectancy elsewhere, and the Scottish Government believes alcohol plays a significant part in these inequalities. Those in deprived communities are around five to six times more likely to be admitted to hospital (and to die) due to alcohol misuse than those from the most affluent areas.\(^6\)

5. There are social and economic costs of excessive alcohol consumption. Excessive drinking can cause families to break up: one in three divorces cites excessive drinking by a partner as a contributory cause\(^7\). It is a huge overhead on Scotland’s economy: the total costs of alcohol misuse are estimated at £2.25 billion every year, equivalent to £500 for every adult living in Scotland or 10% of GDP\(^8\). This includes estimated annual costs to the NHS of £405 million and to the police of £288 million and a cost of £400 million to Scottish industry from lost productivity and absence. It can result in crime and disorder: 49% of Scottish prisoners (including 76% of young offenders) said they were drunk at the time of their offence\(^9\) and two-thirds of those accused of homicide in 2007-08 (and whose drug status was known) were either drunk or on drink and drugs at the time of their offence.\(^10\)

6. Alcohol misuse is no longer a marginal problem, with up to 1 in 2 men and up to 1 in 3 women in Scotland estimated to be regularly drinking over sensible drinking guidelines. Consumption has increased by around a fifth in Great Britain since the early 1980s\(^11\) and this increased consumption is driven in significant part by the fact that alcohol has become 70% more affordable over the same period.\(^12\) The increase in consumption has been driven by off-sales

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\(^4\) General Register Office for Scotland


\(^6\) Alcohol Statistics Scotland 2009, Information Services Division, National Health Service, February 2009

\(^7\) Alcohol Harm Reduction project: Interim Analytical Report, Prime Minister’s Strategy Unit, 2003, http://www.cabinetoffice.gov.uk/media/cabinetoffice/strategy/assets/caboffice%20alcoholhar.pdf

\(^8\) Costs of Alcohol Use and Misuse, Scottish Government, May 2008: http://www.scotland.gov.uk/Publications/2008/05/06091510/0


\(^12\) Alcohol Statistics Scotland 2009, Information Services Division, National Health Service, February 2009
with more than half of alcohol sold today consumed at home rather than in the pub, whereas home drinking represented less than a quarter of sales in 1980.\textsuperscript{13}

7. Worryingly, significant numbers of children are also regularly drinking alcohol. In 2008 31\% of 15 year old boys and girls drank alcohol in the previous week. The consequences of young people’s excessive drinking are significant, with nearly a quarter (23\%) of those 15 years olds who have drunk reporting getting into trouble with the police and almost a fifth (18\%) having tried drugs as a consequence of drinking alcohol.\textsuperscript{14} In addition, a recent audit of Scottish Emergency Departments over a five week period found nearly 650 children were treated for alcohol related problems, including 15 under 12 years old and one as young as eight.\textsuperscript{15}

8. Scotland will continue to have a relationship with alcohol. For many people, that relationship will remain balanced, positive and enjoyable. However there is also clear evidence that for a large section of the population their relationship with alcohol is damaging and harmful – both to themselves and those around them. The harm caused by alcohol misuse has become a major challenge affecting Scottish society. If the Scottish Government tackle it effectively the benefits will be felt by all through healthier, happier, safer families and communities.

9. The following graphs help illustrate some of the effects of Scotland’s relationship with alcohol.

\begin{itemize}
\item Data supplied to the Scottish Government by The Nielsen Company (formerly AC Nielsen)
\item \textit{Scottish Schools Lifestyle and Substance Use Survey 2008: National Report}, Information Services Division, National Health Service, June 2009, \url{http://www.isdscotland.org/isd/5955.html}
\end{itemize}
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Chronic liver disease and cirrhosis mortality rates per 100,000 population, 1950-2006


Alcohol-related mortality in the UK, 1991-2006

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SECTIONS 1 AND 2: PRICING OF ALCOHOL

Policy objective

10. The objective of minimum pricing is to protect and improve public health by reducing alcohol consumption.

The link between price and consumption

11. There is strong evidence from numerous studies conducted in European countries, the United States of America, Canada, New Zealand and elsewhere, that levels of alcohol consumption in the population are closely linked to the retail price of alcohol. As alcohol becomes more affordable, consumption increases. As the relative price increases, consumption goes down.

12. The Wagenaar study considered 100 separate studies reporting over 1,000 statistical estimates over the last 30 years and found that there was a consistent relationship between price and consumption of alcohol: when prices go down, people drink more and when prices go up, people drink less.

13. The RAND Europe report The affordability of alcoholic beverages in the European Union: Understanding the link between alcohol affordability, consumption and harms supports the link between alcohol price/income/affordability and consumption, and the direct link between alcohol price/income and harms, and states that this provides strong support for the use of alcohol pricing policies as a potentially effective measure to curb hazardous and harmful drinking in Europe. A systematic review conducted as part of the Independent Review of the Effects of Alcohol Pricing and Promotion, commissioned by the UK Government and carried out by the School of Health and Related Research (ScHARR) at the University of Sheffield, found strong and consistent evidence to suggest that price increases have a significant effect in reducing demand for alcohol.

14. In Switzerland in 1999, a 30 to 50% reduction in taxation on foreign spirits, led to a 28.6% increase in consumption of spirits. There was no significant change in the consumption of wine or beer where taxation did not reduce. In March 2004, Finland cut tax on alcohol (by one third) in an effort to reduce the level of alcohol purchasing undertaken by Finns in other EU countries where the price of alcohol was much cheaper. Following the reduction of taxation in Finland, which made alcohol cheaper for all, liver cirrhosis deaths rose by 30 per cent in just one year, as alcohol consumption increased by 10 per cent. Finland subsequently reversed the measure.

17 Wagenaar A.C., Salois M.J., Komro K.A Addiction. 2009, 104
15. In real terms (taking into account disposable income) alcohol is almost 70% more affordable today than it was in 1980\textsuperscript{22}. The increase in consumption since 1960 closely mirrors the reduction in price relative to income, strongly indicating that price has influenced consumption patterns over the last 50 years.

16. The graph below shows how closely price and consumption patterns are linked over a 40 year period. As alcohol has become more affordable, consumption has increased correspondingly.

**Relationship between price and alcohol consumption, 1960-2002\textsuperscript{23}**

![Graph showing relationship between price and alcohol consumption, 1960-2002](image)

17. Comprehensive research by ScHARR at the University of Sheffield has been carried out for both the UK Government (Independent Review of the Effects of Alcohol Pricing and Promotion\textsuperscript{24}) and the Scottish Government (Model-Based Appraisal of Alcohol Minimum Pricing and Off-Licensed Trade Discount Bans in Scotland\textsuperscript{25}). This research estimates that policies which increase the price of alcohol can bring significant health and social benefits and lead to considerable financial savings in the health service, in the workplace, and in the criminal justice system. The complete ScHARR report for Scotland is part of the Regulatory Impact and Competition Assessment prepared for this Bill. While the ScHARR report should be considered in its entirety, the Scottish Government was interested to note that:

- the model showed a strong and consistent link between the price of alcohol and the demand for alcohol. Increasing the price of alcohol is estimated to reduce consumption and alcohol-related harm.

\textsuperscript{22} Alcohol Statistics Scotland 2009, Information Services Division, National Health Service, February, 2009

\textsuperscript{23} Graph taken from Calling Time: The Nation’s drinking as a major health issue, Academy of Medical Sciences, 2004. Data used to derive graph from Tighe, A. Statistical Handbook 2003, Brewing Publications Limited

\textsuperscript{24} http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_091364.pdf

\textsuperscript{25} http://www.scotland.gov.uk/Publications/2009/09/24131201
the model demonstrated a link between price increases, reduced consumption and subsequent reductions in chronic and acute health harms, including cancers, stroke, accidents, injuries and violence.

• minimum pricing targets price increases at alcohol that is sold cheaply. Cheaper alcohol tends to be bought more by harmful drinkers than moderate drinkers. So a minimum pricing policy might be seen as beneficial in that it targets the drinkers causing most harm to themselves and society. Studies also show that cheaper alcohol is also attractive to young people.

• “moderate drinkers” (i.e. those who drink within sensible drinking guidelines) are estimated to be only marginally affected, simply because they consume only a moderate amount of alcohol and also because they do not tend to buy as much of the cheap alcohol that would be most affected by minimum pricing.

• although the driver for minimum pricing is the protection and improvement of public health, the Scottish Government notes that while there is an estimated decrease in sales volume, that may be more than offset by the unit price increase, leading to overall increases in revenue from alcohol sales.

• the economy is likely to benefit through a reduction in sick days per year for all categories of drinker (moderate, hazardous and harmful) and less unemployment among harmful drinkers.

Setting and varying the minimum price per unit

18. The Scottish Government believes that the minimum price should be set and subsequently varied by the Scottish Ministers subject to the control of the Scottish Parliament. This approach would allow for careful consideration of the modelling work carried out by ScHARR, any update to modelling required by more recent data becoming available and any other research that may be carried out before the Parliament is asked to consider any specific minimum price or the variation of a price already in place. The Bill therefore provides for an order making power that would be subject to the affirmative resolution procedure. Any draft order proposing a minimum price would be accompanied by a regulatory impact and competition assessment which related to the specific minimum price being proposed.

19. The Scottish Government is not attracted to the suggestion made in some responses to its discussion paper that the minimum price should be tied to an existing indicator, such as the Consumer Price Index (CPI). Such an approach would weaken the role of Ministers and the Parliament in assessing the effectiveness of a particular minimum price and considering any proposal to vary it. Automatic indexing is rare and it is difficult to see in practical terms how a minimum price would be arrived at on any given day. The Scottish Government considers that it is desirable to maintain flexibility for Ministers and the Parliament to set and vary the price when they both consider it appropriate to do so.

20. The Scottish Government does not consider a need to form a new non-departmental public body (NDPB) or other advisory group to advise on a minimum price. It is difficult to see what such a group could contribute in addition to detailed economic and independent modelling

26 http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_091366.pdf (see evidence statement 2)
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advice (such as that from ScHARR), and any other research and evaluation into the effectiveness of a price already set.

**Alternative approaches**

21. The following alternative approaches were considered.

**Taxation**

22. The Scottish Government has noted the suggestion that the policy objective of protecting and improving public health by reducing alcohol consumption could, in theory, be achieved through increasing alcohol duty and taxation. The Scottish Government does not consider this to be an effective alternative approach at this time for the following reasons:

- the Scottish Parliament presently has no locus in relation to alcohol duty and taxation.
- the current alcohol duty and taxation arrangements are inequitable with different types of products taxed at different levels. The UK Government has not addressed this anomalous situation by linking tax and duty to the alcohol by volume of the product (ABV), rather than the type of product. This means the current taxation arrangements are not a basis on which to construct a policy that is fair to all alcohol producers, both foreign and domestic, and so a minimum price based on tax may have a disproportionate effect on some products and not others. The Scottish Government also notes the UK Government’s view, in response to a petition by Alcohol Concern, that “the [UK] Government does not see alcohol duty as a prime tool for tackling the problems associated with alcohol consumption”.
- alcohol duty is generally seen as a fiscal instrument rather than a public health one. Alcohol tax and duty increases are not always reflected in the price the consumer pays. For example, the Competition Commission’s paper on pricing practices noted that ten grocery retailers (9 of whom operate across Scotland) engage in below cost selling to varying extents. The Competition Commission further notes that for most grocery retailers, the majority of below-cost sales relates to two or three product groups, alcohol being one. This suggests that tax increases are sometimes absorbed by the retailer, absorbed by the producer or offset against other products. This means the price paid by the consumer can remain static, or reduce, meaning there would be no reduction in consumption and no reduction in harm. To the extent that prices are offset, customers are paying more for other groceries to subsidise alcohol consumption.

**Self-regulation or industry involvement in setting price**

23. The Scottish Government considers that its aim of protecting and improving public health by reducing consumption and the alcohol industry’s aim of maximising sales and profit are completely incompatible. The Scottish Government notes the views expressed by Tesco that the Scottish Government should lead any discussions on pricing or promotions with retailers to

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27 [http://www.number10.gov.uk/Page17942](http://www.number10.gov.uk/Page17942)

ensure that any resulting action is legal\(^\text{29}\). However, the Scottish Government believes the robustness of minimum pricing must be protected by ensuring that alcohol manufacturers, retailers and others with an interest in alcohol production, sales and marketing are not involved in the setting of a minimum price, or subsequent variations of that price. The Scottish Government, therefore, does not consider self-regulation or industry involvement in setting a price is either desirable or compatible with EU law and in particular Article 81 of the EC Treaty which would prohibit the alcohol industry from being involved in the setting of a minimum price.

**Preventing the sale of alcohol below the price of duty and tax**

24. The Scottish Government recognises that this approach, suggested by the Scotch Whisky Association and sometimes referred to as a “floor price”, would be a form of minimum pricing. However, the Scottish Government is not aware of any evidence or modelling to suggest that a minimum price fixed in this way would achieve its objective of protecting and improving public health. The Scottish Government also notes that taxes are not fixed by reference to their anticipated effects on health and that, because excise duties are not imposed uniformly, this approach may have a disproportionate effect on some products and not others. As the foundations for this approach are anomalous (being based on the type of drink rather than the alcohol content), and the “floor price” would be likely to be so low as to have little or no effect on public health, the Scottish Government does not believe this approach would be effective nor does it consider that it would be able to justify restricting the market in this way.

**The Canadian minimum pricing model**

25. The Scottish Government considered the Canadian minimum pricing model, known as “Social Reference Pricing”, where minimum prices are set by the Government of each province. The Scottish Government noted that the primary purpose of the Canadian minimum pricing scheme is to prevent discount pricing practices that would drive problematic levels of consumption and fuel youth drinking, however the Scottish Government did not consider it a model that should be replicated in Scotland. In particular, the Canadian arrangements categorise different types of products and create bandings for different strengths of beer. The Scottish Government is concerned that the adoption of the Canadian scheme in Scotland would be unfair to the spirits industry in comparison to beer producers. The Scottish Government is therefore of the view that a minimum price based solely on the ABV of the product is a fairer and more robust approach.

**SECTIONS 3 AND 4: DRINKS PROMOTIONS**

**Policy objective**

26. The objective of restrictions on drinks promotions is to protect and improve public health by reducing alcohol consumption. The objective of conditions on the location of drink promotions is to help emphasise that alcohol is not an ordinary commodity and to contribute to efforts to change Scotland’s alcohol culture.
Off-sales promotional activity

27. Quantity discount promotions are used frequently to encourage customers to buy more alcohol. Common promotions include:

- “buy one get one free” (a 50% discount for bulk buying)
- “3 for the price of two” (a 33% discount for bulk buying)
- “5 for 4, cheapest free”
- “3 bottles of wine for £10” (where if purchased separately the aggregate price for the 3 bottles would be, for example, £15)

28. Alcohol is not an ordinary commodity and the Scottish Government believes it is contrary to the licensing objectives for alcohol to be promoted in a way that provides a financial inducement to buy more than intended. The Scottish Government would encourage retailers to extend the activity that some already have in place to promote alcohol on the quality, heritage and origin of particular brands and to educate consumers about particular products. That, in the Scottish Government’s view, is infinitely more desirable than promoting alcohol in a way that encourages the consumer to purchase more than they had originally intended.

Restrictions already in place and potential effect of provisions (section 3)

29. The Licensing (Scotland) Act 2005 (“the 2005 Act”) sets out a range of “irresponsible promotions” conditions which mean certain promotions are already banned in licensed premises. Some of these apply to both on-sales premises (such as pubs and clubs) and off-sales premises (such as supermarkets and convenience stores). The ban on promotions that involve the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks) applies only to on-sales at present.

30. The ScHARR modelling work estimated that banning all off-trade price promotions (both quantity discounts and other price-based promotions) in conjunction with minimum pricing was more effective in reducing alcohol related harms than minimum pricing as a standalone policy. For example, in relation to off-sales, a minimum price of 40p per unit combined with a total ban on discounting is estimated to reduce consumption by 5.4% compared to a reduction of 2.7% for a 40p per unit minimum price alone. A minimum price coupled with a discount ban also leads to a more uniform reduction in consumption across drink categories than is the case with minimum pricing alone. This is because minimum pricing on its own targets high-strength, low-cost alcohol.

31. On the basis of this modelling, the Scottish Government considers that quantity discounts i.e. promotions that encourage or seek to encourage customers to buy more alcohol, are contrary to the licensing objectives, regardless of whether they apply in relation to on-sales or off-sales.

32. The Scottish Government notes the arguments put forward by retailers that customers who buy in bulk to take advantage of the “free” element of the promotion drink their purchase over a sensible period of time. That will be true to some extent, but the Scottish Government cannot ignore the bigger picture which shows that almost two-thirds of people who drink at least

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30 Licensing (Scotland) Act 2005, section 4
once a week exceed daily recommended guidelines. The shift to drinking at home and purchasing from supermarkets and other off-sales rather than the pub means the Scottish Government needs to bring off-sales into line with on-sales so far as promotion of alcohol is concerned. Notwithstanding this Bill, some irresponsible promotions conditions in the 2005 Act will continue to apply only to on-sales, for example, conditions designed to prevent speed drinking or “all you can drink for a set price” promotions. Such promotions are highly unlikely to be carried out in respect of off-sales so there is no need to extend their application.

Location of drinks promotions (section 4)

33. The 2005 Act requires that alcohol which is for sale only for consumption off the premises may be displayed in only one or both of the following: (1) a single area of the premises agreed between the Licensing Board and the holder of the licence; or, (2) a single area of the premises which is inaccessible to the public. These areas are known as “alcohol display areas”. This restriction applies only to the display of alcohol. It does not extend to material or activity to promote the sale of alcohol which may be displayed or carried out anywhere in a store. Although many premises will wish to confine promotional material and activity to the alcohol display area, the Scottish Government is concerned that some retailers act differently. For example, according to Scottish and Newcastle UK Shopper Research, 55% of beer and cider shoppers do not plan to visit a convenience store to make a beer or cider purchase so there is opportunity to create more impulse sales (i.e. sell alcohol to people who had no intention of buying alcohol). One of the actions suggested is to use “A boards” outside the shop to let people know that cold beer and cider is available. (Merchandising Scotland 09 produced by Scottish Grocer).

34. The Scottish Government considers that promotional material and activity should be confined to the alcohol display areas to help emphasise that alcohol is not an ordinary commodity. Provision is also made in the Bill so that drinks promotions that take place in tasting rooms are not affected by these restrictions.

35. The Scottish Government notes that many non-alcoholic products sold on premises are branded with the names, images or logos of alcohol products. Examples include football and rugby shirts showing a lager brand. Such goods are generally available in non-licensed premises (such as sports shops) and therefore any restriction through licence conditions would have a limited effect. The Bill makes clear that these items should not be considered promotional material and therefore need not be confined to the alcohol display areas.

Alternative approaches

36. The following alternative approaches were considered.

Local conditions

37. The Scottish Government notes that Licensing Boards can, under the 2005 Act, set conditions in respect of off-sales promotions. However, a national approach is preferable given that alcohol misuse and overconsumption affects every part of Scotland and the objective is to reduce consumption and harm in Scotland as a whole, not just in certain local authority areas.

31 The Licensing (Mandatory Conditions No. 2) (Scotland) Regulations 2007 (SSI 2007 No. 546)
National conditions are also easier to implement for multiple retailers who operate in different parts of Scotland.

Self-regulation

38. The Scottish Government recognises that retailers may face legal difficulties concerning Competition Law if they were to enter into discussions or agreements about the promotion of alcohol. The highly competitive nature of the retail sector means that the Scottish Government has no expectation that any one retailer will take the lead and end irresponsible promotions voluntarily. In respect of a voluntary approach to the location of promotional material and activity, the Scottish Government notes the outcome of the UK Government’s efforts in 2007 to secure a voluntary approach to including responsible drinking messaging on labels. Despite the expectation for the majority of products to be compliant by the end of 2008, at July 2008 only 3% of products were fully compliant with the scheme and in early 2009 findings showed that had risen to around only 10% with only 15% keeping with the general thrust of the messages. The Scottish Government, therefore, does not consider that a voluntary approach with industry would be successful.

SECTION 5 – REQUIREMENT FOR AGE VERIFICATION POLICY

Policy objective

39. To assist retailers in preventing sales of alcohol to persons under 18 and to make customers aware that they are likely to be asked for proof of age.

Background and policy proposals

40. Section 102(1) of the 2005 Act makes it an offence for a person to sell alcohol to a person who is under the age of 18. Section 102(2) to (4) provides a defence for a person charged under subsection (1) to show that they believed the person to whom the alcohol was sold was aged 18 or over and that they had taken reasonable steps to establish the purchaser’s age.

41. Since the introduction of test purchasing, the use of “Challenge 21” or “Think 25” policies by retailers and publicans has become more widespread. While the age at which alcohol may be purchased remains 18, retailers have introduced their own arrangements to warn customers that staff will ask for proof of age when a person wishes to purchase alcohol if a member of staff considers that the customer does not look at least 21 (or 25 depending on the retailers own policy). Challenge 21 essentially acts as a comfort zone by ensuring that there should be fewer “borderline” cases where staff thought a person looked over 18 when in fact they were not. Challenge 21 policies also assist staff if they encounter a hostile customer as they can make it clear that it is the retailer’s policy to ask for proof of age.

42. The Scottish Government welcomes the fact that many responsible retailers and publicans already operate Challenge 21 or Challenge 25 and believe such policies, on top of the provisions of the 2005 Act, can help reduce the likelihood of underage sales. The Bill therefore proposes that an age verification policy must be in place in each licensed premises, or for any event or activity carried out under an occasional licence.
SECTIONS 6 AND 7 – MODIFICATION OF MANDATORY CONDITIONS

Policy objectives

43. These provisions address a concern expressed by the Scottish Parliament Justice Committee that powers in the 2005 Act allow Ministers to add further mandatory conditions of premises and occasional licences, but do not include a specific power to modify a condition already prescribed. The Justice Committee supported the policy being pursued in the case concerned (the disapplication of a condition in respect of distillery visitor centres and similar premises) but expressed concern about the breadth of the powers available to the Scottish Ministers. The Scottish Government considers that it is necessary to provide for this flexibility so that licensing law can keep pace with any new developments in the way alcohol is promoted.

44. These sections of the Bill propose an amendment to the 2005 Act which would allow the Scottish Minister to add, delete, or amend conditions as they consider necessary or expedient for the purposes of any of the licensing objectives.

SECTION 8 – SALE OF ALCOHOL TO UNDER 21S ETC.

Policy objectives

45. To require Licensing Boards to actively consider the detrimental effect of off-sales of alcohol to people under the age of 21 within their area, or part of their area.

Background and policy proposals

46. The Scottish Government’s discussion document Changing Scotland’s Relationship with Alcohol: a discussion paper on our strategic approach, included a proposal to raise the minimum legal age for purchasing alcoholic drinks in off-sales to 21 across Scotland.

47. The discussion document set out the key arguments in support of this approach:

- alcohol is much cheaper and more widely accessible in off-sales than on-sales and, therefore, the measure would be likely to generally reduce the amount of alcohol purchased by young people;
- on-sales premises offer a more controlled drinking environment than off-sales, therefore, the behaviour of 18 to 20 year olds is more likely to be moderated;
- it could act as a particular deterrent for drinkers under 18 who are significantly more likely to purchase their alcohol from off-sales rather than on-sales. It would also reduce the opportunity for those aged under 18 to purchase alcohol by proxy through 18 to 20 year olds; and
- local pilot projects in Cupar, Stenhousemuir, Armadale, and parts of England indicate that it could be a low cost measure to help reduce anti-social behaviour and contribute to the promotion of the licensing objectives in local areas.

33 http://www.scotland.gov.uk/Publications/2008/06/16084348/0
48. However, there was limited support for the proposal amongst those who responded to the consultation. The most common reasons given by respondents for opposing this proposal included that it “demonises” all young people, not just those who drink irresponsibly and cause problems, that the minimum legal age for most things is either 16 or 18 and that it represents an erosion of civil liberties for young people. In light of the consultation responses the Scottish Government has decided not to pursue a blanket approach across Scotland. However, the Scottish Government is persuaded that there are clear arguments in support of local approaches where appropriate. The proposals in the Bill will therefore encourage the development of local solutions to address local problems.

49. It will do this by requiring every Licensing Board to undertake an assessment as to whether off-sales of alcohol to people under 21 is having a detrimental impact in respect of one or more of the licensing objectives within their Board area or any part of it. Boards will be required to undertake this assessment as part of their regular review of their policy statement, (at least every 3 years). In addition the Police or the Local Licensing Forum will be able to ask a Board to conduct additional assessments outwith the normal 3 year cycle. The conclusions drawn by the Board do not have to relate to the whole area covered by the Board. For example, a Board could decide that there was a detrimental impact for only certain communities and consequently only choose to apply a condition raising the age for off-sales of alcohol in the premises licences for premises in these communities.

Alternative approaches

50. As described above, following consideration of the responses received, the Scottish Government has decided not to pursue a blanket approach to raising the minimum legal age for purchasing alcoholic drinks in off-sales to 21 across Scotland. Instead the Scottish Government has agreed to provide for locally flexible solutions by requiring all Local Licensing Boards to include a detrimental impact statement regarding the effect of off-sales on those under 21 and whether this is having a detrimental effect on one or more of the licensing objectives in the whole or part of the Licensing Board’s area.

SECTION 9 – VARIATION OF LICENCE CONDITIONS

Policy objectives

51. The Bill also includes a power for Scottish Ministers to set out in regulations specific matters in respect of in which Licensing Boards would be able to apply new conditions to more than one licensed premise at a time. Licensing Boards should be able to apply conditions on all or certain premises licences (e.g. in a particular geographical area). It is intended to make regulations prescribing the age for the purchase of off-sales of alcohol to be a matter in respect of which Licensing Boards can vary conditions of premises licences. This would reduce bureaucracy for Licensing Boards and costs to the licensed trade by removing the need for Licensing Boards to hold a hearing for each premises licence to which a variation of condition was to be applied.

34 Protecting Young People from Alcohol Related Harm, Local Better Regulation Office Case Study Evaluation, April 2009
ENFORCEMENT OF LICENCE CONDITIONS

52. The provisions in the Bill that create new conditions of premises licences and occasional licences granted under the 2005 Act would be enforced through the existing mechanisms provided for by that Act. For example, the requirement not to sell alcohol below a minimum price set by Ministers and the Parliament would be a condition of premises licences and occasional licences granted under the 2005 Act.

53. The 2005 Act provides that each local authority must appoint one or more Licensing Standards Officers (LSOs). Part of the role of the Licensing Standards Officer is to supervise the compliance by licence holders with the conditions of their licence and other requirements of the 2005 Act. The 2005 Act further sets out the functions of LSOs. If the LSO believes that any condition to which the premises licence or occasional licence is subject has been or is being breached, the LSO may (1) issue a notice to the holder of the licence requiring such action to be taken to remedy the breach as may be specified in the notice and (2) if in the case of a premises licence such a notice is not complied with to the satisfaction of the LSO, to make a premises licence review application in respect of the licence.

54. Following receipt of an application for a licence review, the Licensing Board may hold a hearing to consider the circumstances of the particular case and whether any sanction is appropriate. The sanctions available to Licensing Boards range from a written warning through to a licence suspension or revocation.

SECTIONS 10 AND 11 – SOCIAL RESPONSIBILITY LEVY

Policy objectives

55. These provisions will ensure alcohol retailers and licensed premises whose activities can impact negatively on the wider community contribute towards the cost of this impact.

Key information

56. The Scottish Government is proposing that a levy should be applied to some alcohol retailers and certain licence holders under the Civic Government (Scotland) Act 1982 to help offset the costs of dealing with the adverse impact of these businesses or their customers. The principle that the costs associated with the wider impacts of a commercial activity should be borne by those who benefit from it is well established and already applied, for example, in respect of environmental impacts.

57. Alcohol misuse and overconsumption and subsequent disorder and harm places a heavy burden on Scotland’s public services from policing city centres at night, treating alcohol related injuries in Emergency Departments, and providing other services to respond to the consequences of alcohol misuse. The Scottish Government is aware that many town and city centres face their own unique problems with regard to the effects of alcohol misuse. Licensed premises – for example, pubs, nightclubs, off-sales and takeaways – play a vital part in the night-time economy but large numbers of people using these facilities within relatively compact districts can lead to anti-social behaviour and disorder.
58. The Scottish Government considers it is wrong for the full burden of providing these services to continue to be met by the tax payer. Money available to Government is limited, and while businesses already pay business rates, the Scottish Government considers that some of the additional cost of providing services (for example, policing the night-time economy) should be met by those who profit from the sale of alcohol and profit from other types of licensed premises. The objective of a social responsibility levy would be for alcohol retailers and other licensed premises to contribute financially to the furtherance of the licensing objectives set out in the 2005 Act, and which the authority considers necessary or desirable with a view to remediying of mitigating any adverse impact on those objectives.

59. The Scottish Government does not consider that the uses to which a social responsibility levy should be put should be set out nationally. Rather, local authorities should be able to determine priorities in their areas and identify new or enhanced services, initiatives or projects where the use of additional money could best contribute to the achievement of the licensing objectives. The levy should not become a direct alternative to established sources of funding but should provide an opportunity for local authorities and other public bodies to be innovative and creative in finding new ways of promoting the licensing objectives.

60. Although the provisions in the Bill are for an enabling power, the Scottish Government is working with key stakeholders including ACPOS, COSLA, the alcohol industry and other business interests to develop the detail of the social responsibility levy before considering whether to bring any regulations before the Parliament.

Alternative approaches

61. In the absence of a social responsibility levy, the full cost of dealing with the adverse impact of licensed premises would continue to be met fully by local authorities, health boards, the police and other agencies, and ultimately by the taxpayer.

MONITORING AND EVALUATION

62. Following publication of the discussion paper on alcohol in June 2008, the Scottish Government established a Monitoring and Evaluation Reference Group for Alcohol (MERGA) to oversee the development of a portfolio of monitoring and evaluation studies to measure the extent to which the actions set out in the Framework (and the 2005 Act which came into force on 1 September 2009) are effective in delivering the intended outcomes. The measures proposed in this Bill will be factored into these monitoring and evaluation arrangements.

CONSULTATION

63. Discussion and debate on some of the provisions in this Act started in Autumn 2007 when the Scottish Government announced its intention to consider legislation in respect of off-sales promotions and to look further at minimum pricing.
64. A comprehensive package of measures was published for consultation in June 2008 in *Changing Scotland’s relationship with alcohol: a discussion paper on our strategic approach*\(^{35}\). All of the topics in the Bill were included in that consultation document. The discussion paper set out a range of proposals and ideas to address the growing trend of alcohol misuse. The Scottish Government received 259 responses from individuals and 207 responses from organisations. In addition, two MSPs submitted the results of consultations they had carried out with constituents; the Scottish Prison Service provided the views of prisoner and prison service staff; East Renfrewshire Council and Dundee Drug and Alcohol Action Team submitted the views of young people in their area; Young Scot provided the results of a survey and focus groups they carried out on behalf of the Scottish Government; and Scottish Government Ministers also received 53 letters or e-mails on the subject.

65. As part of the consultation process, the Scottish Government held a Youth Summit to gather views on alcohol and its impacts on young people. The Scottish Government commissioned an analysis of the written responses from Hexagon Research and Consulting\(^{36}\). Specific issues raised in the consultation that are relevant to measures included in the Bill are discussed under the relevant section headings earlier in the document, including where alternative approaches were considered. Where there are no alternative approaches, none were considered. A whole range of views were expressed in the consultation, however not all of these require legislation and so are not included in this document.

**Key findings**

*Pricing of alcohol*

66. Although the discussion paper asked respondents to comment on the principles on which a minimum pricing scheme for alcohol should be based, most respondents commented on whether a scheme should be established. There was no consensus amongst individual respondents with 49% in favour of introducing minimum retail pricing and 43% against. Two thirds (65%) of organisations were in favour, while just under a quarter (23%) were opposed. However, 90% of health organisations were supportive of establishing minimum retail pricing, as were 84% of local government bodies, whilst 61% of trade and business sector organisations were opposed.

67. Most of the organisations that supported minimum pricing for alcohol did not comment on the proposed principles on which a scheme should be based outlined in the discussion paper but the majority of those that did suggested that minimum prices should be based on alcoholic strength and should apply across both off and on-sales. Those respondents in favour of the proposals supported the rationale put forward in the discussion paper, e.g. that the increasing affordability of alcohol is one of the main drivers in higher consumption and harm. Reasons given by those who expressed opposition to minimum retail pricing included minimum pricing being perceived as a form of taxation, opposition to the Government setting prices and to the likely impact of increasing the price of alcohol on “responsible” drinkers and people on low incomes.

\(^{35}\) Ibid

\(^{36}\) [http://www.scotland.gov.uk/Publications/2009/02/24154414/0](http://www.scotland.gov.uk/Publications/2009/02/24154414/0)
Drinks promotions

68. Most individual respondents commented on the principle of ending irresponsible promotions and below-cost selling rather than on the specific measures outlined in the discussion paper. These were put an end to off-sales premises supplying alcohol free of charge on the purchase of one or more of the product, or of any other product, whether alcohol or not; put an end to off-sales premises supplying alcohol at a reduced price on the purchase of one or more of the product, or of any other product, whether alcohol or not; prevent the sale of alcohol as a loss-leader. A majority of individual respondents who expressed a view were in favour of the principle of ending irresponsible promotions and below-cost selling (43%) or expressed support for at least one of the measures included in the discussion paper (11%), whilst a significant minority (38%) expressed opposition to these proposals.

69. Overall, two thirds of organisations (66%) that responded to this question supported the principle of restricting promotions and preventing the sale of alcohol as a loss-leader or supported all three of the measures presented in the question. A further 7% expressed support for at least one of the measures. Just under one in five organisations (19%) were opposed to these proposals. Respondents from the health and local government sectors were overwhelmingly in favour (93% and 82% respectively supported the proposals in principle or all three measures), but a majority (56%) of alcohol trade and business organisations were opposed.

70. Amongst both individuals and organisations that commented on the details there was more support for the proposal to end below-cost selling than for restricting promotions.

71. On promotional material, respondents tended to comment on the principle of restricting promotional material in licensed premises rather than on the three specific proposals raised in the discussion paper. These were prevent the display on licensed premises of promotional material relating to alcohol in a way visible to persons outside the premises; prevent the use on licensed premises of any special display designed to promote sales of alcohol for consumption off the premises; prevent on licensed premises any other promotional activity to induce the sale of alcohol for consumption off the premises. A small majority (52%) of individual respondents who expressed an opinion opposed the proposals to further restrict promotional material in licensed premises. A larger majority of organisations (56%) supported the proposals in principle. There was a clear divide in views between the health and local government sectors (respectively 92% and 71% in favour) and the trade and business sector (86% against).

72. Many of the respondents who supported this proposal did so from the point of view that alcohol should be treated differently from other products, that restricting promotional material would discourage impulse buying, and that it would reduce the impact of advertising on young people. Respondents who opposed the proposals gave two main reasons: restricting promotional material would restrict “freedom of choice” and it would have little impact in reducing alcohol misuse or binge drinking.

73. Several producers and retailers, including whisky distilleries with visitor centres and the Scottish Whisky Association, also noted that tight restrictions on promotional material could affect their ability to promote specialist products, including Scottish products.
Sale of alcohol to under 21s

74. A clear majority of individual respondents (62%) expressed opposition to the proposal to raise the minimum legal age for off-sales purchases to 21. This proposal was also opposed by a large majority (63%) of the organisations that responded to this question. The health sector was the only sector with a majority of respondents in favour (52% in favour; 36% opposed). All nine youth organisations that responded to the discussion paper expressed strong opposition.

75. The most common reasons given by respondents for opposing this proposal included that it “demonises” all young people, not just those who drink irresponsibly and cause problems, that the minimum legal age for most things is either 16 or 18, that it represents an erosion of civil liberties for young people, and that the emphasis should be on enforcing current laws and using proof of age schemes to reduce “under-age drinking”. Many organisations that opposed the proposal questioned the evidence cited in the discussion paper.

76. Most organisations that supported the proposal expressed support for the reasons outlined in the discussion paper and saw this measure as one part of an overall strategy. Several organisations also felt that the measure would contribute towards reducing street drinking, anti-social behaviour and associated crime.

Social responsibility levy

77. Although the discussion paper sought views on the detail of how a social responsibility levy should be applied, the majority of respondents expressed their view on the principle of whether a levy should be introduced. There was no consensus amongst individuals on whether a levy should be introduced – 48% were in favour and 44% against. However, large majorities of respondents were opposed to the proposals to apply a social responsibility levy to Occasional Licences (64%) and “other” premises (63%).

78. A small majority (54%) of organisational respondents were in favour of a social responsibility levy. As with most other questions there was a clear difference in the views of health and local government sector bodies that overwhelmingly supported the proposal (82% and 71% respectively) and trade and business sector respondents, a large majority of whom opposed it (81%).

79. Few organisations in favour of the introduction of a levy commented in detail on the possible criteria for introducing it. However, a majority of those that did support all premises being subject to paying the levy and the levy being based on alcohol sales or turnover. Opposition to introducing a levy, in particular from trade and business sector organisations, centred around views that it will be “just another tax”, that it taxes the supplier of alcohol rather than those who are misusing it, and it could penalise all traders to compensate for a minority who allow the misuse of alcohol to take place.

80. During the consultation and policy development process numerous discussions have take place with stakeholders including:

- Alcohol Concern
- Alcohol Focus Scotland
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- Aldi GmbH
- Anheuser-Busch InBev
- Asda Stores Ltd
- Association of Chief Police Officers Scotland
- British Liver Trust
- British Medical Association
- Convention of Scottish Local Authorities
- Co-op
- Diageo plc
- The Edrington Group Ltd
- Federation of Small Businesses
- William Grant & Sons
- Marks and Spencer plc
- Wm Morrison Supermarkets plc
- J Sainsbury plc
- The Scottish Government Alcohol Industry Partnership
- The Scottish Grocers’ Federation
- Scottish Health Action on Alcohol Problems
- The Scottish Licensed Trade Association
- The Scotch Whisky Association
- Tesco plc
- The Wine and Spirits Trade Association
- Whyte and MacKay Ltd

81. Most recently consultation meetings took place with the Scottish Government Alcohol Industry Partnership and with the Law Society of Scotland Licensing Committee. Further meetings will be held during the Bill process.

82. The European Commission and the Office of Fair Trading have been kept informed of the proposals throughout the development process. The Scottish Government will continue to engage with these bodies.
EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

83. The Bill’s provisions do not discriminate on the basis of gender, race, religion, disability or sexual orientation. Section 8 which relates to the off-sales purchase age is considered to have an equalities impact, as does section 9 if used by a Licensing Board to implement a change to the off-sales purchase age.

Section 8 – Sale of alcohol to under 21s etc.

84. Discrimination on grounds of age in relation to the purchase of alcohol in off-sales is considered to be potentially justifiable in terms of the greater good. Age restrictions currently apply to the purchase of a number of products including alcohol, tobacco and DVDs. The underlying rationale for such restrictions is the need to balance the need to protect young people and the wider community with the right of young people to purchase a legal product.

85. Alcohol is a dangerous drug when consumed irresponsibly. The impacts of misusing alcohol can be significant for an individual’s health, well-being and life chances as well as for society more widely in terms of the costs of dealing with any health or criminal justice consequences. For this reason there are existing restrictions on the sale of alcohol to those aged under 18.

86. However, evidence from other countries suggests that increasing the legal drinking age from 18 to 21 can have substantial effects on youth drinking and alcohol-related harm, often for well after young people reached the legal drinking age. There is also evidence that delaying the onset of drinking may be important in reducing the risk of harmful drinking.

87. Research evidence also suggests that young people who drink are more likely to be both the perpetrators and victims of violence. In addition experience from three local pilots in Stenhousemuir, Cupar and Armadale – under which shopkeepers voluntarily raised the age of off-sales purchases to 21 on Friday and Saturday evenings – suggests that such restrictions could help reduce anti-social behaviour and contribute to the promotion of the licensing objectives in local areas.

88. It is considered that Licensing Boards should have the opportunity to thoroughly consider whether there is justification for increasing the age for off-sales purchases to 21 in all or part of

37 The costs of alcohol misuse in Scotland are estimated to be £2.25 billion per annum, Costs of Alcohol Use and Misuse, Scottish Government, May 2008.
38 Section 102 of the Licensing (Scotland) Act 2005 makes it an offence to sell alcohol to a person aged under 18 anywhere (not just on licensed premises as was the case previously under the Licensing (Scotland) Act 1976).
41 Ibid.
their Board area, taking into account the interests both of young people themselves and the wider community.

**Human rights**

89. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

90. The Bill provides for amendments to existing licence conditions under the 2005 Act as well as giving Licensing Boards a power to vary existing licence conditions. This could give rise to issues under Article 1 of Protocol 1 should the amendment or variation amount to an interference with a licence-holder’s property rights. However the rights under Article 1 of Protocol 1 are not absolute and they may be interfered with if this can be justified in the public interest, is proportionate and is in accordance with the law. In relation to sections 1 to 5, the Scottish Government considers that any interference could be justified, proportionate and in accordance with the law. In relation to the power given to Licensing Boards to vary existing licence conditions (section 9) it will be for the Licensing Board to show that any use of the power is in the public interest and is proportionate and so comply with the ECHR. The provisions are, therefore either compatible with the ECHR or capable of being exercised in a manner that is so compatible.

**Island communities**

91. The Bill has no differential impact upon island communities. The provisions of the Bill apply equally to all communities in Scotland.

**Local government**

92. The Convention of Scottish Local Authorities (COSLA) has been consulted on the policies in the Bill that directly impact on them. The Scottish Government is satisfied that the Bill has no detrimental impact on local authorities.

**Sustainable development**

93. The Bill will have a positive impact on sustainable development by reducing the negative social and economic cost of alcohol misuse.
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ALCOHOL ETC. (SCOTLAND) BILL

POLICY MEMORANDUM


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