I write in connection with the recently published Alcohol etc. (Scotland) Bill. Please find below our response to the Bill, which focuses on the practicalities of implementation of the policy should it be accepted by the parliament.

Part 1 – Alcohol licensing

Section 1 – Minimum price of alcohol

Should a minimum price for alcohol be introduced, there some issues that we feel warrant further scrutiny. For on sales premises there is no longer a legal requirement to display a pricelist, after the Price Marking Order (Food and Drink) Services Order 2003 was revoked in 2008. We are concerned about how the minimum price is calculated for a particular drink, and then how that price is passed on accurately to the consumer. We would support the re-introduction of legislation making the display of a price list mandatory in on sales premises – perhaps including a statutory format – and would request further information on how the minimum price of alcohol is to be notified to licensed premises. For example, for a beer delivery to a pub should the brewer be specifying in the delivery document the minimum price at which a pint of the beer is to be sold to the consumer? Or should the premises licence holder be working out the minimum price for a pint based on standard figures supplied. We are concerned that there is room for error and suggest that will require closer scrutiny.

We also feel that the formula provided for the calculation of the minimum price is not expressed clearly enough, and that within the Section the units to be used for the calculation of the strength are expressed as they are in the guidance notes to the Act. This would mean that Section 1(3) would state ‘S is the strength of the alcohol expressed as ABV/100’.

It is our view that if the policy objective is to be met the minimum price would need to be set higher than the example of 40p per unit currently used. At such a price a licensed premises can legally sell a triple vodka for £1.14, or a pint of strong lager for £1.16.

Section 2 – minimum price of packages containing more than one alcoholic product.

Should a minimum price be introduced it should also apply to multipacks of alcohol.

Section 3 – Off sales: restriction on supply of alcoholic drinks free of charge or at a reduced price
We believe that the Licensing (Scotland) Act 2005 as it currently stands does prohibit such offers under Schedule 3 (8(e)). The amendment proposed in this section of the Bill helps to reinforce and clarify the existing position in one respect. However, the disapplying of subsection Schedule 3 (8(e)) from off sales may lead to weaker controls. We would strongly recommend that that the application of subsection (e) to off sales is retained.

As part of the call for evidence we are asked for a view on the role of promotional offers and promotional material in encouraging people to purchase more alcohol than they intended.

Promotional offers are a fundamental aspect of the way that alcohol is now sold in Scotland. The majority, if not all, of off licence premises continually have promotional offers available. It is worth noting that under the principal legislation, a drinks promotions is any activity ‘which promotes or seeks to promote the buying or consumption of any alcohol on the premises’. We are of the opinion that the activity most prevalent, and most unsatisfactory, is the discounting of alcohol in off sales premises. For example, in Edinburgh recently some of the offers available have included:

- 3 for £10 on bottles of wine, where the individual bottles included in the offer have been up to £10 each. This results in a promotion of ‘buy one get two free’. Typically however, such offers will be for individual bottles of wine priced at £5-£7, and will still provide a substantial saving to the consumer.
- Some promotional activity relating to wine where the saving increases with the amount purchased. For example, the £3 for £10 offer described above was available online with a further discount, that allowed 6 bottles for £17.
- Some supermarkets ran ‘better than half price offers’ at Christmas time, which included a range of alcohol available at 60% discount against the typical selling price.
- The continual availability of multibuy promotions on wine, spirits and lager.
- Discounts that are only available on the purchase of more than one bottle of alcohol, as opposed to a discount on individual bottles if the purchaser wishes to buy only one.
- One offer where a litre bottle of spirits was discounted to the extent that it was cheaper to buy the litre bottle than it was to buy the 70cl bottle of the same brand.

It is our opinion that the manner in which off sales premises promote the purchase of alcohol seeks to encourage people to buy more alcohol than they intended. Our Licensing Standards Officers have advised that they believe that the Act as it currently stands restricts such offers in off sales premises. They are currently in discussion with a number of retailers about this very issue. They have advised that the they consider that the term ‘measure’, currently within Schedule 3 8 (2(e)) of the Act, can apply to off sales transactions, and are of the view that in order to ensure compliance with the
current legislation the deep discounting of alcohol in off sales premises currently prevalent in the trade must be curtailed.

Section 4 – Off sales: location of drinks promotions

At the previous consultation document of June 2008 we were asked for views on the display on licensed premises of promotional material relating to alcohol in a way visible to persons outside the premises.

It is unclear if the current proposal in Section 4 of the Bill is intended to achieve that aim. Many off licensed premises have one of their alcohol display areas as the window area of the shop. As it stands, the current proposal will allow for alcohol promotions to be displayed in a way visible to persons outside the premises, ie in shop windows facing the street. If the intention is to restrict such promotions, we feel this may be impractical in small and specialist off sales premises. It is unclear if this is the intention of the current proposal and therefore we cannot comment definitively.

Further clarification is required on the following:

1. Is a window area included?
2. Is the advert to be visible to someone outside the premises?
3. Is it the intention to restrict anyone outside of the display area from seeing the promotional material? If so, further consultation may be needed on format, size and placing of adverts in store, ie no posters hanging from the roof.
4. How will such a ban apply to internet sales?

Section 5 – Requirement for age verification policy.

We are of the opinion that this will only be effective if the policy is a written one. It should be linked into the Section 102 of the Act as part of the steps required to prove due diligence when an offence is committed, and also part of the mandatory staff training required. The policy should be written and available for inspection by Licensing Standards Officers.

Sections 6 and 7 – modification of mandatory conditions

No comment necessary

Section 8 – Off sales; sale of alcohol to Under 21s etc

We are still of the opinion that if the age restriction is not enforced it is immaterial what age restriction is set. Nevertheless, Licensing Boards having the opportunity to respond to specific local issues is a positive step. To this end the detrimental impact assessment is seen as a positive step and is one that we support. In subsection 6 the Board should provide a statement of reasons to the Licensing Forum if it declines the request to review the detrimental impact statement.
Previous consultation documents have raised the possibility of Trading Standards Officers being given the power to carry out test purchasing operations for alcohol. If that proposal, which we support, is to be introduced it should be done so along with an amendment to Section 7A (6) to allow the local authority to request a review of the detrimental impact assessment.

**Section 9 – Premises licences: variation of conditions**

As an enabling power this section is welcomed. However, it should also be the responsibility of the Licensing Board to notify the Licensing Standards Officer for the board area. As it is the role of the LSO to monitor the premises licence holders’ compliance with conditions of their licence they must be notified of any change to those conditions.

**Part 2**

**Section 10 - Licence holders: Social responsibility levy**

While agreeing in principle that premises should be responsible directly for their patrons – during dispersal or queuing for entry, and clearly while they are on the premises – we are not convinced that this should extend to a compulsory fee over and above licensing fees. Offences exist for over-consumption etc of alcohol with penalties through to revocation of the licence, which if enforced robustly should provide a deterrent.

As we know that the level of alcohol bought from off sales and consumed in houses is increasing steadily, we do not see how an objective assessment can be made of what premises is actually doing the harm. A social responsibility fee could also take the form of a fixed penalty notice on an individual who has committed a crime or antisocial behaviour while under the influence of alcohol.

In addition it is noted that the intention is for Civic Government licence holders to be subject to such a fee. It is unclear how this can be applied to those categories of licence holders given that the Licensing Objectives contained in the principal Act apply only to alcohol licensed premises.

**Part 3**

No response required.

**Conclusion**

Primarily the Bill introduces new mandatory conditions or amends existing ones. This will increase the involvement of the LSO substantially and therefore it may be that a commensurate increase in funding is necessary to ensure the role is fulfilled.
We have previously suggested that LSO powers are strengthened to include powers of seizure, and still maintain that this is a necessary step to ensure that the role is carried out effectively.

Should you wish to discuss these matters further please do not hesitate to contact me using the details at the foot of this letter.

Stephen Walker
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19 January 2010