Alcohol etc. (Scotland) Bill

Moray Licensing Board

Pricing of Alcohol
The proposals provide for a minimum price per unit to be prescribed (by Regulation) in respect of alcohol.

As the minimum price would be prescribed by Regulation, the Moray Licensing Board is concerned that it would be too easy a mechanism for the price to be implemented and subsequently adjusted.

The Moray Licensing Board is also concerned that minimum pricing would have little impact on groups such as young or underage drinkers and may actually impact on certain responsible drinkers such as pensioners.

Alcohol In Moderation news alert dated 13th January 2010 stated that: “Studies from the UK and around the world show that parents being good role models, knowing where their kids are, who they’re with and setting ground rules they stick to makes the most difference to the age at which kids start drinking and the amount that they drink.”

Further information is required on the effectiveness of various controls on the consumption of alcohol. Price and availability are being promoted and education is stated to be ineffective. Opinions are at odds.

The underlying theme of the Licensing (Scotland) Act 2005 of restricting the availability of alcohol was not made clear as a policy issue. It was viewed by stakeholders as a modernisation of the law. Similarly it is not clear as to why one strategy is preferred over another and why pricing will be more effective in bringing about cultural change than education. The main reason seems to be that a change in price is an immediate, measurable and publicly visible change.

It is unclear as to how will the effectiveness of the policy be measured. A change in culture is only likely to happen over generations with no obvious and immediate effects.

Drinks Promotions
Section 3 as drafted changes the types of promotions that apply for off sale premises.

The causal link between promotions, particularly off-sale promotions, and consumption requires clarification. There seems to be merit in the argument that off-sale promotions merely enable consumers to stock up on their favourite drinks at favourable prices and then consumer them over time. If that is true then consumption rates are not affected by promotions. The consumer benefits. Therefore there should be good evidence that promotions are wrong
(in that case problems) and that preventing promotions will reduce consumption AND problems.

As drafted the provisions on promotions would still not prevent the sale of a bottle of wine at £3.33 per bottle (even if for a 72 hour period) as opposed to 3 for £10. The price would be the same overall as long as the price did not fall below the minimum price.

There is specific provision within the drafting to effectively say that 24 bottles shall cost the same as 24 times 1 bottle – but that assumes that 1 bottle is available. Supermarkets could remove individual cans of lager and only sell in bulk (subject to minimum price).

Concern has been expressed in Moray about retailers using vouchers as rewards/incentives. It is not clear how, if at all, proposals would affect the voucher system e.g. spend £30 in store and get a £5 off voucher.

How would this work? For example, spend £30 in store and get £5 off your shopping. What if the shopping included some wine? Would the discount be applied to the wine or the groceries or each in proportion (to determine whether the price is below minimum)? It is easier to see if the voucher is £5 off a crate of beer but, even then, the original price of the crate is not varied. The crate is scanned through at the shelf price. A post scanning discount is being offered to a certain set of customers by way of reward if they produce the voucher. The same might be true of offers like 10% off for pensioners.

If alcohol is not to be sold below the minimum price the question is what will be considered to be the price at which the alcohol is sold?

The price is not varied but a discount is applied to a certain category of customer. Presumably this does not count as a price variation in terms of promotions either?

Section 4 then sets out that not only are alcohol displays restricted in off sale premises to certain areas but also any promotion of alcohol within those premises will also be restricted to the display areas plus any tasting room. In theory this is said to mean that things like posters advertising alcohol promotions will not be visible outside the alcohol display areas.

Drinks promos cannot take place in other parts of the premises or in the vicinity of the premises. According to the notes “vicinity” is intended to mean the area surrounding the premises but it is totally undefined. There may be problems with interpreting the word “vicinity”. For example how far away would the sign have to move?

The section then describes non alcoholic products as those that do not consist of or contain alcohol but are branded as such and states that such branded non alcoholic products should not be considered as promotions. One examples given is clothing branded with an alcoholic product. Therefore Guinness t-shirts need not be restricted to the alcohol display area.
The actual drafting in the Bill seems at odds with the accompanying notes in this respect. Where is the line between promotional material and non alcoholic branded products?

For example, just be reading the definition of branded products, they would seem to include dummy bottles of alcohol on the basis that they do not "consist of or contain alcohol" but they are branded as such. Dummy bottles of alcohol are already allowed outside the alcohol display area as they do not contain alcohol. The drafting does nothing to fix this problem and allowing such displays would seem to be at odds with the intentions of the legislation. Would this wording need to be changed to include products designed to represent alcoholic products?

The Moray Licensing Board is concerned that provisions regarding drinks promotions do not adversely affect the whisky festivals or whisky tastings that are an integral part of our tourism package in Moray.

**Age Verification Policy**

There will be a requirement for all premises (including premises licensed by an occasional licensed) to have in place an age verification policy with a minimum age of 21. Premises can choose to set the age higher e.g. 25.

This will be a mandatory condition.

There would need to be guidance on what would constitute a policy as there is no requirement for the policy to be written or evident to customers.

In the absence of such requirements there would be no means of checking the existence of a policy and compliance with the requirement.

Every premises could already be able to claim to have an existing “policy” in respect of under 18’s by making it a point of asking everyone if they are over 18 and it would follow that changing the requirement to 21 would make no practical difference.

The occasional licence application form would need to be amended so as to include a requirement to set out the policy

**Sale of Alcohol to Under 21s**

The proposals is to impose a requirement on Boards to publish a detrimental impact statement as to the extent to which the Board considers that off sales to persons under 21 is having a detrimental impact in a particular area or locality.

It is for Boards to determine the locality/area and “detrimental impact” means any adverse affect on any of the licensing objectives so is not restricted to crime and disorder.
If a detrimental impact is found to exist then s.27A would enable Boards to impose a restrictive condition on off sales premises (whether within a geographical area, by type of premises or by time) to those under 21. The two measures seem to go hand in hand, although s.27A would stand as a power to very conditions by itself.

It is believed that s.27A would still need to be clearer in terms of authorising Boards to add a condition about off sales to under 21’s – that is unless the clear power to do so is this intended to be a “prescribed matter” under s.27A(1).

With the recent experience of problems associated with the overprovision assessment it is difficult to see how the detrimental impact assessment will be carried through.

For overprovision there was nothing that could have lead to a clear and cogent argument (either in favour of or against overprovision) and so there was no basis for a consequent policy.

The potential impact of the proposed policy would be on those aged 18 to 21. It is clear that Boards would need the power to impose a condition banning off sales to those over 18 but under 21 if that class of persons are shown to be causing difficulties. The practical problem is formulating a policy to demonstrate that causal link. The following problems are anticipated:

- There are great difficulties with formulating such policy and therefore basing decisions on such policy immediately leaves those decisions open to challenge;
- If formulation of a policy is time restricted it makes it less likely that anything meaningful will be arrived at. The police may have a duty to provide information and assistance but it is not police priority and obtaining meaningful information for overprovision was not possible, even in the rather lengthy timescale given;
- It is only likely to be crime statistics that would record the ages of those persons involved in incidents. This creates difficulties with the other objectives;
- To analyse crime statistics down to the fine details of individual events so as to single out those where 18 to 20 year olds are involved would be impracticable and may not be allowed by the police;
- To base a policy on incidents involving all minors would only catch those under 18 and to take such matters into account would not be valid as it would not target the age group in mind. The sale of alcohol to under 18s is unlawful anyway so there is no reason other than to target those 18 to 20 who can lawfully purchase alcohol;
- the whole policy would have to be reviewed (including consultation) upon the happening of further events before those events could then be addressed.

If detrimental impact means any adverse impact on any licensing objective then it would be easier for Boards to simply respond to events as they arise.
by having the ability to add such conditions to premises licences directly under s.27A without the need for the detrimental impact assessment.

The existence of the policy will actually make it harder to impose such conditions.

The problem with a direct power to simply add a condition is that it would not allow for multiple premises to be “caught” by the same policy and would not create a presumption against new premises selling to under 21’s. However it seems much less likely that multiple premises constituting an area would be causing problems together as opposed to one or two premises that could be reviewed individually.

Quite apart from the power to impose such a condition, the imposition of the condition per se is perceived to be unworkable. From the retailers point of view it may affect business and therefore provide an incentive for retailers to be more responsible. However it would also be very difficult to monitor and enforce such a policy. Presumably the police would need to extend test purchasing operations, or would that be local authorities through trading standards?

From a customer’s point of view, conditions about sales to under 21’s would only serve to create irrelevant differences between localities/areas/shops that belittle the licensing system and that could easily be circumvented by a short bus ride.

Social Responsibility Levy
It would appear from accompanying notes that the levy would be imposed by the Scottish Government. However the Bill as drafted includes power for Ministers to pass on all functions of determination, administration, collection and enforcement to “local authorities”. Licensing Boards have separate legal identities to local authorities.

Will the power purely be for local authorities or will it be expressly extended so as to include Licensing Boards? Boards should, presumably, be at least involved in determination of fees and in respect of alcohol licensed premises. That is unless Regulations will further provide for a separate enforcement process other than through the Licensing (Scotland) Act 2005.

The drafting refers to recovering expenditure in furtherance of the licensing objectives however only the Licensing (Scotland) Act 2005 details licensing objectives. This does not sit well with charges being imposed on those holding licences under other Acts that make no mention of objectives. It may be better to repeat the objectives here by saying expenses involved in preventing crime and disorder etc etc.

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