Introduction

1. The SRC represents the broad spectrum of Scottish retailing, from large multiples and department stores to smaller independents, selling a wide selection of food and non-food items through many types of outlet. In September 2009, retailers employed 235,000 people in Scotland, about 10% of the workforce, and total Scottish retail turnover is estimated at £24bn per annum, about 11% of total Scottish turnover.

2. Data published by the Scottish Government put the value of Scottish off-licence sales of alcohol at £1.27bn in 2007¹, just over 5% of the £24bn figure above – though this is an artificially high percentage as unlike most other retail sales it includes a substantial element of excise duty. The corresponding on-trade figure was £2.33bn. There were over 6,000 off-licence premises in 2007, 37% of Scotland's 17,000 total number of licensed outlets². Most grocery stores sell alcohol as part of their offering.

General comments

3. Retailers take their social responsibilities extremely seriously, and have been at the forefront of efforts to tackle alcohol misuse. SRC members have led the industry in tackling under-age drinking, with the introduction of the ‘Challenge 25’ scheme. This has already made a substantial impact on consumers as well as on retail staff, and should be allowed time to prove its effectiveness. Retailers have rolled out unit information on own-brand lines and at point of sale. In December, the British Retail Consortium announced³ that SRC members are substantially increasing their contributions to the UK-wide Drinkaware Trust. Retailers will now contribute one-third of the Trust’s much-increased £5m trade income, as well as all our members’ work to promote the Trust’s campaigns and materials. It has not been widely acknowledged that retailers were also extensively involved in Scotland’s Alcohol Awareness Week and many other relevant initiatives.

4. The SRC thus agrees with the need for continuing action to target alcohol misuse but opposes the general principle of the Alcohol Bill which is, avowedly, ‘to adopt a whole population approach’⁴. Whilst recognising the seriousness of alcohol-related harm implied by official statistics, SRC notes that more people enjoy alcohol within sensible weekly guidelines than those who drink above those guidelines. Yet most of the Bill’s proposals affect all alcohol consumption within their scope, whether or not it is responsible. This penalises and alienates those who are drinking

³ http://www.brc.org.uk/details04.asp?id=1672&kCat=&kData=1
⁴ Changing Scotland’s Relationship with Alcohol, February 2009, para. 11
responsibly, and with a particular disproportionate effect on responsible low-income consumers and shoppers on a tight budget.

5. It also fails one of the fundamental tenets of better regulation, that legislation should be targeted at the problem which it is aiming to solve. The Scottish Government has argued that minimum pricing is a targeted approach, but the SRC remains unconvinced that it is the most targeted approach which could be devised. As for the blanket promotional restrictions and ‘social responsibility levy’, little or no evidence has been presented that they are effectively targeted at problem consumption or irresponsible retailing.

6. The way in which competition law very severely constrains retailers from deciding not to compete with each other on price and promotion does not appear to be well understood by the Bill’s supporters. Millions of people enjoy finding quality, choice, promotions and good value when they go shopping, whether for alcohol or anything else; and most then consume the products they buy sensibly and over a period of time. Despite the tough economic climate, retailers have been trying harder than ever to meet customer expectations and help consumers through the deepest recession for many years. Several continue to create new employment and to invest substantially in Scotland. Increased efforts to stock Scottish products, such as whiskies, and regional ales, should also be mentioned.

7. The SRC is very concerned by any approach which would distort the market between Scotland and the rest of the UK. This applies to the proposals on pricing, promotion and the social responsibility levy. The SRC disagrees with all these interventions but, if they happen, a UK-wide approach is preferable. Otherwise, there is a significant added incentive to cross-border and online trade, undermining the effectiveness of any measures and the UK single market, and damaging the Scottish retail sector and economy. There is concern more generally about other loopholes rendering some proposals ineffective.

Alternatives to the Bill’s proposals

8. Targeted interventions against alcohol misuse; targeted enforcement of existing law (specifically the very new Licensing Act, the impact of which is not yet known or taken into account); a much increased emphasis on test purchasing; and the use of education, information, campaigning and partnership working to help produce cultural change represent the approaches to which retailers are committed, and which will work. The paper being submitted by the Wine & Spirit Trade Association gives details of further alternatives supported by retailers, including those led by the Retail of Alcohol Standards Group. The trade in general can expand on other measures in supplementary evidence if requested: we ask the Committee’s forbearance that with a 4-page limit for this paper, the SRC has focussed on the Bill itself.
Minimum pricing

9. The arguments for and against minimum pricing are now well-rehearsed. Here is an example of a disappointing tendency to criticise retailers, especially supermarkets, and sometimes even to appear to demonise their role. The SRC is surprised that proponents close to the Scottish Government make comments such as, 'It's time to put Scotland’s health before supermarket profits'\(^5\), as if, first of all, supermarkets do not have a due regard for customers’ health; but secondly, overlooking the Scottish Government’s own evidence that minimum pricing could financially benefit retailers. Indeed, opponents of minimum pricing also justify their position by saying 'it will increase the profits of supermarkets'\(^6\), not mentioning that the retail sector has in general consistently opposed minimum pricing. Despite – arguably – potential financial gain, the majority of retailers consider alcohol minimum pricing wrong in principle. They question whether it will work, whether it is sufficiently targeted and whether it is legal.

10. It is accepted that since the mid-1980s alcohol has become more affordable relative to earnings (although, first, its price has increased above the Retail Prices Index (RPI); secondly, food prices have actually risen below the RPI\(^7\) – so alcohol is not cheaper in real terms nor has its price decreased relative to food prices). However, most other consumer products have also become more affordable as people have on average become richer. Therefore it is very difficult to control prices to keep up with earnings and, if this were done, it automatically discriminates against lower earners. Furthermore, median earnings are comparatively lower in Scotland than the rest of the UK\(^8\). So alcohol is relatively less affordable here, countering assertions that Scotland’s apparently greater alcohol misuse problem is caused by affordability.

11. The link between price and the level of irresponsible alcohol consumption is not straightforward. The UK has among the highest duties in Europe, but some countries with significantly lower duties also have much lower consumption. Looking within the UK, Scottish Government data published only this week confirm that the average alcohol unit price in Scotland is almost identical to the UK average\(^9\). Promotions are also generally the same. Yet alcohol-related harm appears higher in Scotland than in England. It follows that the underlying Scottish causes must be factors other than price or promotion. (The new data also show that a trend from on- to off-sales in 2005-9 did not correlate to any rise in overall consumption per head).

12. If the link between price and irresponsible drinking is examined, the main area of debate over the likely effectiveness of minimum pricing is then to what extent those drinking at hazardous or harmful levels will change their

\(^5\) SNP news release, 3 January 2010
\(^6\) Labour news release, 26 November 2009
\(^7\) British Retail Consortium economic research paper, based on ONS statistics
\(^8\) [http://www.statistics.gov.uk/pdfdir/ashe1109.pdf](http://www.statistics.gov.uk/pdfdir/ashe1109.pdf)
pattern of behaviour in the face of relatively modest price rises (for example, the Sheffield study estimates the extra cost to harmful drinkers at 40p per unit to be £2.64 per week and says that this will cause them to reduce their consumption by 4.5%). The SRC notes that minimum pricing will have little effect on the night-time on-trade economy where prices would generally fall above the minimum, and that sections of the on-trade have stated their support for minimum pricing.

13. While SRC queries the link between price and irresponsible consumption and therefore does not support duty rises either, its general view is that if the state is going to intervene in the pricing mechanism, excise duty applied on a UK-wide basis would be a preferable means to do so. It is more flexible than a fixed price per unit for all alcohol, and can be targeted at different products depending on different perceived health, social or economic objectives. Alcohol excise duties raised £8.5bn for the Exchequer in 2008/9\(^{11}\) (with VAT on that alcohol providing further revenue). If a duty rise were to create additional revenue – a hypothesis which would be carefully modelled and checked by Treasury statisticians – then at least that money would accrue to the Exchequer for public services, rather than creating any further suggestion that it would be ‘pocketed’ by retailers. It would also avoid some of the competitive distortions to the UK single market. Incidentally, any proposals for Scotland-only alcohol taxes should be resisted as they would likewise distort the market and undermine Scottish retailers by driving trade online and to England.

14. All price-based measures or tax increases add to incentives for smuggling and the black market. There is already a significant level of duty evasion/fraud (recently estimated by HMRC at 5% of the UK market for spirits\(^{12}\) – HMRC do not give figures for other alcohol). Illicit supplies are sometimes counterfeit, and often associated with organised crime, but are afforded competitive advantage if legitimate prices increase.

15. Minimum pricing and other pricing or tax interventions penalise, and potentially alienate, the majority of responsible consumers as well as those drinking too much. Unlike the other education and enforcement alternatives, they do not narrowly target problem consumption or irresponsible retailing.

16. To the SRC’s knowledge, no other product with potentially harmful consequences if misused has in recent UK history had minimum pricing applied. Why is it the cure for society’s relationship with alcohol when it has not been considered for tobacco, for example? It would set a bad precedent for state price controls over other products where government decided to intervene in the market to limit consumption.

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\(^{10}\) Defined as >50 units per week for men and >35 units per week for women

\(^{11}\) [http://www.hmrc.gov.uk/about/hmrc-accs-0809.pdf](http://www.hmrc.gov.uk/about/hmrc-accs-0809.pdf)

17. Minimum pricing squeezes out budget brands, distorting competition and the market, and reducing consumer choice. Retailers strongly refute the equation by some Government representatives of value with poor quality: the category includes many own-brand products, sought by cost-conscious shoppers.

18. Clause 1(2) of the Bill, on minimum pricing of packages containing more than one alcoholic product, could create a perverse incentive for retailers not to stock individual bottles/cans of some products, and only sell larger multi-packs. This would be counter-productive to the objective.

19. The Scottish Government has not demonstrated the legality of minimum pricing under UK/EU/WTO competition rules. If retailers themselves were to be involved in any way in suggesting or setting a minimum price, except in the unlikely event that each company did so unilaterally, it would be called a cartel and those involved prosecuted for price-fixing. Government may seek to invoke a public interest exemption, but SRC’s general understanding is that it would need to show that there were no alternatives (eg within the framework of excise duty) which were not more proportionate and less anti-competitive.

20. Some suggest banning ‘below cost’ selling. The Policy Memorandum implies that the Scottish Government already considers a ban on the small fraction of sales below the basic duty + VAT floor price to be potentially illegal under competition law. Banning sales below invoice/input cost is another possible definition, but this gives producers greater influence over retail prices. The SRC notes it has been supported by the whisky industry which has made much of defending competition principles. It could also catch a wide range of discounted sales across all price ranges even when unlinked to any evidence of alcohol misuse. In any event these proposals even more clearly fall to reserved competition law.

Off-sales promotional restrictions

21. The Bill proposes to ban all multi-buy discounts such as ‘buy 3 for the price of 2’, ‘buy 6 and save 5%’, ‘buy 2 for £20’, ‘10% off if you purchase a case’. With all the focus hitherto on the flagship proposal of minimum pricing, it is not widely understood that this proposal has identical shortcomings. In particular, its legality under competition law also has to be demonstrated. Again, if retailers themselves were to consort to introduce such restrictions, it would be anti-competitive and investigated by competition authorities.

22. The SRC submits that the measure would be a very blunt instrument as, like minimum pricing, it affects all those who shop, with a disproportionate impact on consumers on a tight budget, and is not targeted at irresponsible consumption or retailing. How many of us can honestly say that we do not look for and value such deals when we go shopping?

13 para. 24
23. To demonstrate public interest and proportionality under competition law, the SRC believes that the Scottish Government would need to adduce evidence linking the promotions banned with alcohol misuse. The SRC suggests that, on the contrary, there is ample evidence that most alcohol on such promotions is purchased to be consumed with friends and family and over a period of time, and is bought together with other groceries as part of the regular household shop. When the Licensing Act 2005 was passed under the previous Scottish administration, the then Scottish Executive itself issued guidance stating that, ‘Ministers do not believe that this policy [ie bans on ‘irresponsible’ promotions] can presently be generally extended to off-sales promotions in the absence of any concrete evidence to suggest that purchasing a large quantity of alcohol in an off-licence is linked to immediate consumption and to binge drinking’\(^\text{14}\). The SRC does not know of strong new evidence on this specific point having since been presented.

24. Smaller and specialist retailers can depend heavily on such promotions in their business models, as their way of attracting footfall and competing. The measure would therefore disproportionately affect them.

25. Clause 4 bans promotional activity except in designated store areas. The SRC questions what evidence links promotion in other store areas to alcohol misuse. 4(3), likewise with little justification, bans promotion in the ‘vicinity’ of shops. It is unclear why this does not apply to on-trade premises – this is discriminatory.

26. The Scotch whisky industry appears to have expressed support for the proposed retail promotional restrictions despite their generally robust defence of competition law principles. The SRC notes that Scotch whisky is currently less frequently bought in Scotland on multi-buy discount promotions (consumers generally buy a single bottle) but a ban could slightly help to bolster prices for whisky, and for drinks producers generally, potentially against the interests of consumers shopping for good value. The advice of the competition authorities on this and other aspects of the Bill might be of interest.

27. Also like minimum pricing, introducing such restrictions only in Scotland will again boost distance sellers (Internet and mail order) based elsewhere in the UK who can continue to offer multi-buy discounts, to the detriment of the Scottish retail sector and economy. This legitimate concern has been consistently under-estimated and dismissed by the Scottish Government.

28. The SRC accepts that alcohol is a product subject to special rules – such as excise duty, licensing law and various other forms of regulation – but considers this proposal an ill-targeted step too far and that the general public who enjoy alcohol within sensible limits would ask why drinks would be one of the only commodities for which bulk discounts cannot apply.

\(^\text{14}\) Licensing (Scotland) Act 2005, Guidance for Licensing Boards and Local Authorities, April 2007
Social responsibility levy

29. The Bill proposes that very broad and vague powers should be given to Ministers and local authorities to raise supplementary hypothecated revenues from the licensed trade (on- and off-), and that such a tax may be made by secondary legislation. The affirmative resolution procedure is specified but it is of major concern that such a proposal should not be enacted and tightly defined within primary legislation, contrary to fundamental and historic principles of taxation. Unlike other areas of the Bill, these draft clauses have not developed since last presented to the Scottish Parliament in the Criminal Justice & Licensing Bill.

30. As drafted, this looks like a blanket tax on all sale of alcohol. Such a tax already exists, in the form of excise duty. A new tax would duplicate the structure which is already there, be very controversial in its design and level, potentially be difficult and cumbersome to administer and collect, and once again distort the market between Scotland and the rest of the UK – adding to the incentive for distance selling and cross-border shopping, at the expense of Scotland’s retailers and economy.

31. There is again no precedent from other products like tobacco and there should be much concern at setting such a precedent for ‘social responsibility’ taxes being levied on other products and activities.

32. The Scottish Government intends the levy for ‘those who profit from the sale of alcohol’. It is inconsistent and illogical that grocers for whom alcohol is only a part of sales should be targeted, but not drinks producers/importers for whom it represents 100% of turnover, or others in the chain such as wholesalers.

33. Such a levy would ultimately be passed on in the form of higher prices to all Scottish consumers, whether or not they consume sensibly – the same disadvantage as the Bill’s other main proposals.

34. The levy undermines individual responsibility, by implying that individuals need not be responsible for misusing alcohol, since retailers, and ultimately responsible consumers, will be made to pay. It also undermines retailers’ existing social responsibility initiatives – funding for which would be in doubt if diverted to a mandatory levy for initiatives led by local authorities. The enthusiasm and energy of retailers, their deep knowledge of consumer behaviour, and their efficiency and economy of national scale, should be harnessed in initiatives to change consumer culture, rather than high standards of trading conduct being disincentivised by taxation. There will always be some who are cynical about retailers’ motives and involvement, yet there are numerous examples of successful voluntary partnerships towards national health, environmental and other social objectives.

35. It is remarkable that the Scottish Government states in its Policy Memorandum that it ‘does not consider that the uses to which a social
responsibility levy should be put should be set out nationally’. It appears willing to condone an inconsistent patchwork of local projects, of undefined cost, and has a worrying degree of faith, in a context of tight local authority funding, that ‘the levy should not become a direct alternative to established sources of funding’.

36. It is proposed that a working group will continue to develop the detail of the levy. The SRC calls on the Health Committee to reject the levy. If there is one, it must be targeted at individuals who misuse alcohol and, in a fault-based way, at retailers who trade irresponsibly. However, in the latter case, existing licensing law could be used to penalise or as appropriate to unlicense the trader, rather than a new levy.

**Local raising of the legal purchase age to 21**

37. This proposal still has many of the flaws which caused its previous version (a nationwide raising of the age) to be rejected by the Scottish Parliament and a majority of consultees.

38. Rather than encouraging and educating the young, it penalises them – especially those drinking responsibly – in areas of local bans. It is odd that an 18- to 20-year-old could fight and die for their country but be unable to buy alcohol in their local shop when off duty. It would create confusion and inconsistency for both retailers and customers when sales are refused in some stores, but not others nearby.

39. It is illogical and contradictory to allow 18-year-olds to purchase alcohol in the on-trade but not in an off-licence. There is little evidence that young people are more likely to consume in moderation within on-trade premises, or that such discrimination against responsible off-trade retailers is justified.

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15 Policy Memorandum, para. 59