Dear Sean

The Alcohol Etc. (Scotland) Bill
Invitation to give Oral Evidence - 17 March 2010

I refer to the above oral evidence session of the Scottish Parliament’s Health & Sport Committee held on Wednesday 17 March 2010.

I understand, following the publication of the transcript of this session in the official report, that the Health & Sport Committee are seeking further information from the Law Society of Scotland.

I also understand that Jim McLean has written under separate cover with regard to the Dutch Gin minimum price case which was quantitative restriction prohibited by Article 30 of the Treaty of Rome. The link to this case is attached for your information.


In this case the minimum pricing of Dutch Gin was held to be quantitative restriction prohibited by Article 30 of the Treaty of Rome then in force.

With particular reference to the comments at Column 2984 by Rhoda Grant, MSP and also at Column 2990 by Ross Finnie, MSP, I can provide the Health & Sport Committee with the following comments.

The Law Society notes that Section 10 of the Bill allows Scottish Ministers by Regulations made by Statutory Instrument to make provision for the imposition on relevant licence-holders of charges for the purposes mentioned in Sub-Section 3.

The purposes are outlined in Sub-Section 3 being
“meeting or contributing to expenditure incurred or to be incurred by any local authority

(a) in furtherance of the licensing objectives; and

(b) which the authority considers necessary or desirable with a view to remedying or mitigating any adverse impact on those objectives attributable (directly or indirectly) to the operation of the business of relevant licence-holders in the authority’s area.”

The Society is of the view that this is within the competence of the Scottish Parliament as it amounts to a “local tax to fund local authority expenditure” which is the exception to reservations A1 entitled “Financial and Economic Matters” under Part II entitled “Specific Reservations” of Schedule 5 to the Scotland Act 1998.

With particular reference to Ross Finnie’s comments, the Society notes that there is no provision contained within Section 10 as to how the social responsibility levy is to be imposed.

It is presumed that it is the intention of Scottish Ministers to determine this in terms of Section 10(4)(k) whereby Regulations under Sub-Section 1 may, in particular – confer functions on local authorities in relation to the determination, administration, collection and enforcement of charges, or in relation to any other matter provided for in the Regulations.

The Society takes a view that, in order to be within the exception to the reservation, the social responsibility levy requires to be raised by local authorities rather than by Scottish Government. If, in terms of the Regulations, it is raised by Scottish Government, it may not qualify as a “local tax”.

The Society further notes that the Bill simply enables Scottish Ministers to make regulations, which include terms of Section 10(4)(k) but is of course not limited to giving Scottish Ministers the power to confer functions on local authorities.

In all the circumstances, the issues of competence will very much depend on the Regulations.

I trust that the above information is of some assistance to you, but should you wish to discuss further, please don’t hesitate to contact me.

Kind regards.

Your sincerely
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