5 May 2010

Dear Irene,

ALCOHOL ETC (SCOTLAND) BILL

1. The Subordinate Legislation Committee published its report on the Alcohol etc. (Scotland) Bill on 24 February. The Scottish Government was asked to respond to the report before Stage 2 of the Bill process. This letter responds to the recommendations and observations made by the Committee.

Section 1 - Minimum price of alcohol

2. The Committee report concluded:

- “The Committee draws to the attention of the lead committee that it is apparent, from evidence given by Scottish Government officials, that a careful and complex assessment of any particular minimum price and alternative options will be required in order to determine whether any exercise of the power will be compatible with Community law and therefore within devolved competence. In the absence of a proposed minimum price and supporting evidence it is not clear to the Committee that it has been shown by the Government that the power introduced by section 1 can be exercised within competence, although the Committee accepts that it could be possible to do so.”

3. The Scottish Government has set out, in a letter dated 21 April 2010 from the Cabinet Secretary for Health and Wellbeing to the Health and Sport Committee, further details on what will be required for a minimum price for alcohol based on a minimum price per unit of alcohol to comply with European law. We consider that this form of minimum pricing is capable of complying with European law. The Scottish Government welcomes the Committee’s acceptance that it could be possible for the power in section 1 to be exercised within competence and further notes that this issue has been considered in some detail by the lead Committee.
4. The Committee’s conclusion on section 1 of the Bill continued:

- “The use of affirmative procedure...would not afford the Parliament sufficient opportunity to conduct full and proper scrutiny of the minimum price of alcohol proposed by the Scottish Ministers. The Committee therefore recommends that the initial price per unit should be set out in the Bill so that the supporting evidence can be subject to full parliamentary scrutiny. This could be facilitated if the Scottish Ministers were to announce the initial price prior to the Stage 2 proceedings. Subsequent orders varying the minimum price per unit should be subject to super-affirmative procedure.”

5. Stage 1 involves consideration of the Bill’s general principles and the lead Committee has taken a great deal of evidence on the principle of minimum pricing as a means of reducing alcohol consumption and harm. To inform that debate, the lead Committee has been presented with a range of information and evidence including modelling work which shows the possible impact of minimum pricing based on a range of prices. The Scottish Government does not believe that the consideration of the principles of minimum pricing has in any way been hampered in the absence of a decision about a specific minimum price per unit of alcohol.

6. The Cabinet Secretary for Health and Wellbeing informed Parliament on 29 April 2010 that the Scottish Government intends to announce the specific minimum price per unit of alcohol before a final vote is taken by the Parliament. Once the Bill is passed any order to specify a minimum price per unit of alcohol will be subject to the affirmative resolution procedure, allowing Parliament to scrutinise the specific price. We have also made clear that any order would be accompanied by a regulatory and competition impact assessment tailored to the price being proposed. The Cabinet Secretary has also noted that the Scottish Government must take the decision on a specific minimum price per unit of alcohol in a careful and considered way, taking into account all the evidence. That process in running in parallel with the Bill process.

Section 6 - Premises licences: modification of mandatory conditions

7. The Committee considered that

- “the proposed amendment to the power to modify mandatory conditions in relation to premises licences is acceptable in principle and it is appropriate that the power remains subject to affirmative procedure.”

8. The Scottish Government welcomes the Committee’s view.

Section 7 - Occasional licences: modification of mandatory conditions

9. The Committee recommended:

- “that the power currently available under section 60 of the Licensing (Scotland) Act 2005 to vary the mandatory conditions which apply to all occasional licences should be made subject to the affirmative procedure.”

10. The Scottish Government accepts the Committee’s recommendation and intends to bring forward an amendment at Stage 2 to give it effect.
Section 9 – Premises licences: variation of conditions

11. The Committee:

- invited the lead Committee to seek further evidence from the Scottish Government for the power in section 9, to prescribe those areas in respect of which licensing boards may vary the conditions of operation for all or a particular group of premises’ licences. Should the power remain in the Bill, the Committee will consider its scope again after Stage 2.

12. The Scottish Government notes that the lead Committee may seek further evidence, and further notes the Subordinate Legislation Committee’s intention to consider the scope of this power again after Stage 2. I can reaffirm that the Scottish Government intends that this power is to be used so as to enable Licensing Boards to impose licence conditions restricting off-sales to people age under 21 and at present no representations have been received about other areas in which the power could be exercised.

Section 10 – Licence holders: social responsibility levy

13. The Committee concluded that it:

- Does not consider that the question of the appropriateness of using subordinate legislation for the purpose of establishing a Social Responsibility Levy has been adequately addressed by the Scottish Government. The Bill and accompanying documents provide only limited information about the principles of the levy; the details of the policy are still being developed by the Scottish Government. As a minimum, the Committee would expect details of the levy, such as who is to be responsible for administering it, the basis on which liability to pay it will be determined, the maximum charge permitted, the implications for non-payment and any right of appeal to be set out in the bill itself. The Committee draws to the attention of the lead Committee the evidence received from the Scottish Government regarding the proposed use of subordinate legislation for the purpose of establishing a social responsibility levy. Should the power remain in the Bill, the Committee will consider its scope again after Stage 2.

14. The Scottish Government notes the Committee’s views on this section. These issues are now being pursued by the lead Committee and the Cabinet Secretary for Health and Wellbeing has since provided further information to the lead Committee. The Scottish Government further notes the Committee’s intention to revisit the scope of this section after Stage 2.
Sections 11 and 14

15. The Scottish Government notes the Committee’s comments.

16. I am copying this letter to the Clerk to the Health and Sport Committee.

Yours sincerely

GARY COX
Head of Licensing