HEALTH AND SPORT COMMITTEE

AGENDA

5th Meeting, 2010 (Session 3)

Wednesday 10 February 2010

The Committee will meet at 10.00 am in Committee Room 3.

1. **Decision on taking business in private**: The Committee will decide whether to take item 5 in private.

2. **Alcohol etc. (Scotland) Bill**: The Committee will discuss its recent fact-finding visit.

3. **Alcohol etc. (Scotland) Bill**: The Committee will take evidence on the Bill at Stage 1 from—

   Dr Petra Meier, Senior Lecturer in Public Health, School of Health and Related Research, University of Sheffield;

   Dr Peter Anderson MD, PhD, MPH, FRCP, Consultant in Public Health.

4. **Alcohol etc. (Scotland) Bill (in private)**: The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

5. **Inquiry into the Clinical Portal Programme and the Scottish Centre for Telehealth**: The Committee will consider a draft report.

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The papers for this meeting are as follows—

**Item 3**
University of Sheffield submission  
HS/S3/10/5/1

**Item 4**
PRIVATE PAPER  
HS/S3/10/5/2 (P)
SPICe briefing on liquor licensing  
HS/S3/10/5/3

**Item 5**
PRIVATE PAPER  
HS/S3/10/5/4 (P)
Submission from the School of Health & Related Research, University of Sheffield

Written evidence regarding University of Sheffield analysis of effects of minimum pricing for alcohol in Scotland

We wish to submit a short summary of evidence from our University of Sheffield report, commissioned by the Scottish Government. The findings were published on the 28 September 2009 and are the results of an independent academic study carried out in the School of Health and Related Research at the University of Sheffield. As part of the study, we researchers examined the potential effects of different minimum pricing levels on patterns of alcohol consumption and the resulting impact on alcohol-related health, crime, and workplace problems in Scotland.

To compile the report, we analysed over 20 separate policy scenarios, including setting a range of minimum prices per unit of alcohol, a total discount ban in off-licences and supermarkets and combinations of the two strategies. The research examined how policies affect alcohol purchasing and consumption by different population groups, including moderate, hazardous and harmful drinkers both in the on-licence (such as pubs, clubs and restaurants) and the off-licence (such as supermarkets) sectors.

The terms moderate, hazardous and harmful drinkers relate to how much people drink, and are the standard definitions used by the Office for National Statistics and others. Moderate drinkers are those who drink within current UK guidelines (they do not regularly drink more than 4 units per day for men or 3 units per day for women). Hazardous drinkers are those who drink above these guidelines, but do not consume more than 50 units per week (men) or 35 units per week (women). These levels are associated with increased long-term risks for health and social harms, and many of these drinkers also put themselves and others at risk through severe intoxication. Harmful drinkers are those who drink more than 50 units per week (men) or more than 35 units per week (women) – a level of drinking which has been associated with a high risk of both acute and chronic harms.

Data sources

Most of the modelling is based on a fresh analysis of existing Scottish data sources on consumption and harms. For example – via the Scottish Health Survey – the model includes the patterns of consumption for over 11,500 people in Scotland; and – via the Expenditure and Food Survey – individual alcohol purchases in Scotland between 2001/02 and 2005/06. Scottish data on crime, alcohol attributable disease and hospitalisations, and workplace harms were used. Whilst we have checked that our findings are consistent with what is known about alcohol policy internationally, a lot of effort has gone into ensuring that wherever possible the data underpinning the model are both recent and Scotland-based.

The rationale for the introduction of minimum pricing and off-licence discount bans?

- Minimum pricing is a policy that sets a minimum price at which a unit of alcohol can be sold. Price increases are targeted at alcohol that is sold cheaply.
- Cheaper alcohol tends to be bought more by harmful drinkers than moderate drinkers. So a minimum price policy might be seen as beneficial as it targets the drinkers causing the most harm to both themselves and society, whilst having little effect on the spending of adult moderate drinkers.

The estimated effects of policies. Example a minimum price of 40p per unit of alcohol combined with a total ban on off-licence discounts

- A 40p minimum price together with a total off-trade discount ban gives an estimated reduction in consumption of alcohol of 5.4%
- reduction of around 6,300 hospital admissions per year.
- reductions in direct health (NHS) costs at £21m per year.
- financial value of avoided mortality and morbidity (valued using the quality-adjusted life years (QALY) measure) of £113m per year.
- reduction in numbers of crimes by 3,200 per annum of which 850 are violent offences.
- direct cost savings associated with crime of around £2.7m per annum.
- gains in quality of life associated with decreased crime is valued at £1.9m per annum.
- reduction of 29,000 days absence per annum in the workplace.
- 1,200 avoided unemployment cases per annum in the harmful drinker group (assuming jobs are available for those able to work).
- financial value for these estimated unemployment reductions of £29m per annum.

Variation of effects at different possible minimum price thresholds?
- The general pattern here is that the more intensive the policy, the greater the harm reduction. Higher minimum prices lead to greater harm reductions, and this goes up steeply. There is relatively little effect for a 25p minimum price, but 40p, 50p and 60p have increasing effects.
- Increasing levels of minimum pricing together with a ban on all off-trade discounting improves the effectiveness of minimum pricing. Overall reductions in consumption for 25p, 30p, 35p, 40p, 45p, 50p, 55p, 60p, 65p, 70p together with a total discount ban are: 3.2%, 3.5%, 4.1%, 5.4%, 7.1%, 9.2%, 11.7%, 14.3%, 17.1% and 20.0%.
The separate effect of a total discount ban

A total ban on off-trade discounting alone is estimated to reduce consumption by 3.0%, but this may only prove effective if retailers were also prevented from responding by simply lowering their non-promotional prices.

The effect of suggested policy strategies on moderate drinkers

Most policy options affect moderate drinkers in a minor way, simply because they consume only a small amount of alcohol and also because they do not tend to buy as much of the cheap alcohol that is targeted by minimum pricing and off-trade discount bans. Harmful drinkers buy more alcohol and also tend to choose cheap alcohol; therefore these would be most affected.

Would supermarkets and pubs lose out on revenue with minimum prices or discount bans? Would the Exchequer gain more from duty and VAT?

No, both off-trade and on-trade retail sectors are estimated to see increased revenue from minimum pricing or a total ban of off-trade discount. In general, retailers would sell less volume, but at higher prices, leading to an overall increase in sales value. This effect is seen in supermarkets and off-licences, and also in pubs, clubs and restaurants. For example, a 40p minimum price plus a total discount ban policy is estimated to result in increased revenues for the off-trade of £90m per annum and for the on-trade £40m per annum.

Assuming no change to duty and VAT rates, most price polices have relatively small effects on revenue for the Exchequer, as duty receipts fall (these are related to volume sold) but VAT receipts rise (related to sales value). For example, a 40p minimum price plus a total discount ban policy is estimated to result in a change in revenues to government of £12m.

Report reference:

MODEL-BASED APPRAISAL OF ALCOHOL MINIMUM PRICING AND OFF-LICENCED TRADE DISCOUNT BANS IN SCOTLAND

A Scottish adaptation of the Sheffield Alcohol Policy Model version 2

Authors:
Modelling Team: Dr Robin Purshouse, Mr Yang Meng Mr Rachid Rafia and Professor Alan Brennan

Principal Investigator: Dr Petra Meier


Dr Petra Meier
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SUMMARY

- The Licensing (Scotland) Act 2005 created a new liquor licensing system. The Criminal Justice and Licensing (Scotland) Bill as introduced would make minor amendments to the 2005 Act. The Alcohol etc. (Scotland) Bill would introduce more substantive additional provisions.

- The 2005 Act sets out licensing objectives, which form the basis of decisions in relation to liquor licensing. Licensing boards are responsible for setting policy and making decisions. In respect of a number of their functions, they must consult with local licensing forums representing those with an interest in licensing issues. Licensing standards officers are responsible for enforcing the licensing regime in their local authority area.

- The 2005 Act introduced a new system of licences: premises licences for any premises selling alcohol; personal licences for individuals supervising the sale of alcohol; and occasional licences for premises where alcohol will be sold on a temporary basis.

- An application for a premises licence must contain an operating plan detailing how the premises will operate, including the hours during which alcohol will be sold. Anyone can object to the granting of a premises licence, and the chief constable has a specific role in providing reports in relation to criminal activity.

- The 2005 Act introduced national mandatory conditions which apply to all premises and occasional licences. These are used to require training of staff, to control the price of alcohol and to prohibit irresponsible drinks promotions.
CURRENT LEGISLATION

The Licensing (Scotland) Act 2005 (asp 16) was a major overhaul of licensing legislation and came into force fully on 1 September 2009. Between 1 February 2008 and 1 September 2009, the licensing regime was in a transition phase which combined aspects of both the new legislation and the previous Licensing (Scotland) Act 1976 (c. 66).

The Criminal Justice and Licensing Bill currently before the Scottish Parliament would, as introduced, make some minor amendments to the 2005 Act. The Bill also contained sections enabling licensing boards to prohibit off-sales to people under the age of 21 and introducing a social responsibility levy. However, in a letter to the Justice Committee on 24 March 2009, the Minister for Parliamentary Business indicated the Scottish Government’s intention to remove these sections from the Bill and include them in a health bill to be introduced at a later stage.

The Alcohol etc (Scotland) Bill was introduced in the Parliament on 25 November 2009. It contains the sections regarding off-sales to under 21s and the introduction of a social responsibility levy mentioned above. It also contains provisions in relation to the minimum pricing of alcohol, off-sales promotions, age verification and licensing conditions.

THE LICENSING (SCOTLAND) ACT 2005

The main piece of legislation governing liquor licensing is the 2005 Act. This briefing will focus on explaining the licensing system introduced by the Act and the powers given to local licensing boards and Scottish Ministers.

ADMINISTRATIVE STRUCTURES

The licensing objectives

Section 4 of the 2005 Act lists five licensing objectives. The pursuit of these objectives guides local licensing boards in relation to the policies they set and the decisions they make. Essentially, they provide the framework for decision-making under the 2005 Act. The objectives are:

- preventing crime and disorder
- securing public safety
- preventing public nuisance
- protecting and improving public health
- protecting children from harm

Licensing boards

Each local authority has at least one licensing board and may make a decision to divide its area into more than one division, each with a separate
licensing board. The licensing board is made up of councillors and is responsible for setting policy and making decisions on liquor licensing issues, including the granting or refusal of licences.

Each licensing board must publish a licensing policy statement every three years detailing how it will exercise its functions. These are commonly available on local authority websites and can be a useful source of information on how licensing operates in that area. Licensing boards must consult with the "local licensing forum" (see below) and other interested parties in the preparation of such statements.

Overprovision

The licensing policy statement must contain a statement as to whether there is "overprovision" of licensed premises in any locality within the licensing board’s area. Overprovision can relate to licensed premises generally or a particular type of premises (for instance late night opening premises), and it is up to the licensing board to decide what constitutes a locality for the purposes of the assessment. Overprovision is one of the grounds on which a licensing board can refuse a licence.

The National Licensing Forum (established by the then Scottish Executive to provide guidance on the implementation of the 2005 Act) has produced further draft guidance in relation to overprovision.

Off-sales to under 21s

Section 8 of the Alcohol etc. (Scotland) Bill would require licensing boards to include a further statement in their licensing policy statements, similar to the overprovision statement. This "detrimental impact statement" will consider the extent to which off-sales purchasing by people under the age of 21 is having a detrimental impact in any locality or the whole of the licensing board’s area.

Licensing standards officers

Each local authority must appoint at least one licensing standards officer, with responsibility for ensuring that licence holders comply with the requirements of their licences, providing general information on licensing issues and helping to resolve disputes in relation to licensing matters. Note that licensing standards officers are responsible for policing the licensing regime in their areas, while licensing boards are responsible for making decisions in relation to licensing matters.

Local licensing forums

Each local authority must establish a local licensing forum for its area. Where there is more than one licensing division in the area, the council can choose to establish local licensing forums for each division. Forum membership must,

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as far as possible, be representative of those with an interest in licensing in
the area.

The local licensing forum has a number of consultative functions under the
2005 Act. It also has responsibility for reviewing the activities of the licensing
board and making recommendations in relation to them. In turn, the licensing
board has a duty to consider advice and recommendations made by the local
licensing forum and give reasons if these are not followed.

**LICENSING REGIME**

Under the 1976 Act, seven different types of licence were available depending
on what the establishment applying for the licence did (for example, the public
house licence and the restaurant licence). Under the 2005 Act, all these
licences are replaced by a “premises licence”, required for any establishment
selling alcohol. In particular, a premises licence is required for both those
selling alcohol for consumption on the premises (“on-sales”, such as pubs and
restaurants) and those selling alcohol for consumption off the premises (“off
sales” such as local shops and supermarkets).

The 2005 Act also creates the “occasional licence”, for events selling alcohol
on a temporary basis in premises which are not already licensed, and the
“personal licence”, required by certain people with responsibility for
supervising the sale of alcohol.

**Premises licences**

A premises licence, required by any premises selling alcohol, must specify a
premises manager for the premises. The premises manager has certain
responsibilities in relation to the selling of alcohol and, in addition, must hold a
personal licence (see below).

An application for a premises licence must be accompanied by an “operating
plan” describing how the premises will be run, a “lay-out plan” showing the
lay-out of the premises and various certificates (planning, building standards
and food hygiene).

The operating plan is a key document. It provides the licensing board with the
information necessary to understanding what the applicant is proposing and,
once a licence is granted, licensing standards officers can enforce its
provisions (for example in relation to the hours in which the premises will sell
alcohol). Section 20 (4) specifies that an operating plan must contain:

- a description of the activities to be carried on in the premises
- a statement of the times during which it is proposed that alcohol be
  sold on the premises
- a statement as to whether the alcohol is to be sold for consumption on
  the premises, off the premises or both
• a statement of the times at which any other activities in addition to the sale of alcohol are to be carried on in the premises

• where alcohol is to be sold for consumption on the premises, a statement as to whether children or young persons are to be allowed entry to the premises and, if they are to be allowed entry, a statement of the terms on which they are allowed entry including,
  (i) the ages of children or young persons to be allowed entry
  (ii) the times at which they are to be allowed entry
  (iii) to which parts of the premises they are to be allowed entry

• information as to the proposed capacity of the premises

• information about the individual who is to be the premises manager

• other information in relation to the premises and the activities to be carried on there, as may be prescribed

**Licensed hours**

The 2005 Act removes the concept of permitted hours contained in the 1976 Act and, in theory, it is possible for premises be licensed to sell alcohol for consumption on the premises 24 hours a day. However, section 64 of the 2005 Act makes it clear that 24-hour licences should be granted in exceptional circumstances only. **Guidance** published by the Scottish Government suggests that licensing boards should treat applications for up to 14 hours as reasonable but may wish to give further consideration to applications for hours beyond 14\(^2\). Section 65 of the 2005 Act limits the hours in which off-sales can be made to between 10am and 10pm.

**Conditions attached to premises licences**

One of the innovations of the 2005 Act was to create a system whereby nation-wide mandatory conditions can be attached to premises licences. This enables Scottish Ministers to control, for example, drinks promotions deemed to be irresponsible, at a national level. Section 27 of the 2005 Act sets out how the system of mandatory conditions operates. The mandatory conditions which apply to all premises licences are set out in Schedule 3 to the 2005 Act (and Schedule 4 lists the mandatory conditions which apply to occasional licences). Scottish Ministers are empowered to alter or extend this list of mandatory conditions.

Among other things, the mandatory requirements cover:

• the role and qualifications of the premises manager

• the requirement for a personal licence holder to supervise all sales of alcohol

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• training requirements for staff

• pricing of alcohol – any change to the price that alcohol is to be sold at must be brought in at the beginning of a period of licensed hours and cannot be changed again for 72 hours. This has the effect of preventing “happy hour” type promotions

• irresponsible drinks promotions – certain sorts of promotions are prohibited, such as:
  - supplying alcohol free or at a reduced price on the purchase of other drinks (for example “three for the price of two” type promotions)
  - providing an extra measure of alcohol free or at a reduced price on the purchase of other measures
  - supplying unlimited amounts of alcohol for a flat fee (for example “all you can drink” type promotions)
  - encouraging a person to buy or consume a larger measure of alcohol than they had originally intended (for example “a double for the price of a single” type promotions)

A number of the requirements in relation to irresponsible drinks promotions only apply to the sale of alcohol for consumption on the premises (such as supplying alcohol free or at a reduced price on the purchase of other drinks). However, some apply to both on- and off-sales, including the prohibition on promotions which encourage a person to buy or consumer a larger measure of alcohol than they originally intended. City of Edinburgh Licensing Board has announced its intention to explore the possibility of using this latter restriction to prevent “three for the price of two”-type promotions in off-sales as well as on-sales premises.

The Alcohol etc. (Scotland) Bill currently before the Parliament (section 3) seeks to remove any ambiguity by amending schedule 3 paragraph 8 so that the prohibition on supplying alcohol free or at a reduced price on the purchase of other drinks applies to both on- and off-sales. It also seeks to further control promotional activities in off-sales premises. In addition, the provisions in the Bill which relate to minimum pricing and age verification will be taken forward as additional mandatory licence conditions.

The Scottish Government has brought forward secondary legislation which contains mandatory conditions for late-night opening venues\(^3\). Conditions include requirements for the presence of a trained first-aider, security staff on the door and a working CCTV system.

**Local conditions**

Licensing boards have, since well before the introduction of the 2005 Act, attached their own conditions to licences. Licensing boards generally have

\(^3\) Licensing Conditions (Late Opening Premises) (Scotland) Regulations 2007 (SSI 2007/336)
standard conditions which they apply to all licences, or all licences of a certain category (for example, public house licences). They may also apply specific conditions to certain licences (for example, the requirement to screen a sporting event where an extension to licensed hours has been granted for this purpose). The 2005 Act enables local regulation in this manner to continue, although local conditions cannot be inconsistent with – or more onerous than – any of the mandatory conditions.

**Objections to applications for premises licences**

The 2005 Act widens public participation in the licensing process, allowing anyone to object to the granting of a premises licence, or to make representations in relation to appropriate changes to be made, or conditions set, regarding the application. The licensing board is required to notify certain groups, such as neighbouring properties and the community council, when they receive a licence application. The chief constable also has a specific role in the process, with an ability to object to application and a requirement to provide reports in relation to whether the applicant has a criminal record or is involved in serious organised crime.

**Anti-social behaviour reports**

Chief constables are also required to provide “anti-social behaviour reports” in relation to applications for new premises licences. These must detail instances of, and complaints in relation to, anti-social behaviour taking place on or in the vicinity of the premises. An amendment contained in the Criminal Justice and Licensing (Scotland) Bill would require such reports only where specifically requested by the licensing board. The Justice Committee (lead committee in relation to the parliamentary scrutiny of the Bill) was unable to reach consensus on this section⁴.

**Refusal of applications for premises licences**

The 2005 Act requires licensing boards to hold a hearing to determine premises licence applications. The grounds on which a licensing board can refuse an application include (section 23):

- that the licensing board considers that the granting of the application would be inconsistent with one of the licensing objectives
- that, considering the activities proposed, the character of the premises and the people likely to use them, the premises are unsuitable for the sale of alcohol
- that, having regard to the number and capacity of other licensed premises in the locality, the licensing board considers that granting the application would result in overprovision

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Where a licensing board refuses an application, it must give written reasons for its decision, which can be appealed to the sheriff court.

**Occasional licences**

Occasional licences are used for unlicensed premises in which it is intended to sell alcohol on a temporary basis (for example, a community hall being used as the venue for a wedding or a marquee at a local fair). An occasional licence can be issued for a maximum period of 14 days.

In addition, voluntary organisations may apply for occasional licences in relation to events which they are holding on their premises. An individual voluntary organisation is limited to four applications for four days or more per year, or 12 applications for less than four days per year (not exceeding a total of 56 days per year).

The process for applying for an occasional licence is broadly similar to that for a premises licence. Details about the premises and the activities proposed (which closely match the requirements of an “operating plan”) must be provided. Anyone can object to an application and the licensing board, in its determination of the application, can reject it on similar grounds to a premises licence. One key difference is that, where a licensing board has not received any objections or adverse reports from the chief constable or licensing standards officer, they must grant the licence.

Occasional licences are subject to mandatory conditions set by Scottish Ministers and contained in Schedule 4 to the 2005 Act. Again, these are broadly similar to the mandatory conditions applied to premises licences and specifically include the same limitations in relation to the pricing of alcohol and the prohibition of irresponsible drinks promotions. Licensing boards can also set additional local conditions which apply to the licence.

**Personal licences**

The 2005 Act introduces the concept of a personal licence, which is held by an individual working in the licensed trade. It allows the individual to authorise or supervise the sale of alcohol. A premises manager (as required by all premises licences) is required to have a personal licence. As all sales of alcohol must be supervised by someone with a personal licence, larger premises (such as supermarkets) may require several members of staff to have a personal licence.

Licensing boards are responsible for issuing personal licences, which last for 10 years. Under section 74, the licensing board must grant a licence where:

- the applicant—
  - is 18 or over
- possesses a suitable licensing qualification
- has not had a personal licence revoked in the past 5 years
  - a satisfactory report in relation to their criminal record is received from the chief constable

A personal licence holder must inform the licensing board if convicted of a criminal offence. In addition, a licensing board can make a finding that a personal licence holder has engaged in “conduct inconsistent with the licensing objectives”. Where this happens, the licensing board will hold a hearing to consider the licence holder's continued suitability to hold a personal licence.

FURTHER INFORMATION

The Scottish Government has issued guidance to licensing boards in relation to the exercise of their functions. This provides further information about how the Scottish Government expects aspects of the 2005 Act to operate. Note that this guidance was issued in 2007 and therefore may not reflect the most up-to-date position in all areas.

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05 February 2010

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