The Committee will meet at 10.00 am in Committee Room 6.

1. **Subordinate legislation:** The Committee will take evidence on the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/33) from—

   Shona Robison MSP, Minister for Public Health and Sport, Scottish Government, Margie Taylor, Chief Dental Officer, Eric Gray, Branch Head, Dental, Ophthalmic and Fraud Policy Branch, and Lynne Morrison, Senior Policy Officer, Dental, Ophthalmic and Fraud Policy Branch, Scottish Government Primary and Community Care Directorate.

2. **Subordinate legislation:** Mary Scanlon to move S3M-5939—

   That the Health and Sport Committee recommends that nothing further be done under the National Health Service (General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/33).

3. **Subordinate legislation:** The Committee will consider the following negative instruments-

   - The Pharmacy Order 2010 (Commencement No.1) Order of Council 2010 (SI 2010/299 (C.24));

   (Not before 10.30 am)

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

   John Beard, Chief Executive, Whyte & Mackay Ltd;
and then from—

Andrew Barker, Assistant Chief Constable, Association of Chief Police Officers in Scotland;

Derek McGowan, Licensing Standards Officer, City of Edinburgh Council;

Mairi Millar, Clerk to the Licensing Board, Glasgow City Council;

Michael McHugh, Chair, West Dunbartonshire Licensing Forum;

John Loudon, Convener of the Licensing Law Subcommittee, and Jim McLean, Convener of the Competition Law Subcommittee, Law Society of Scotland;

Chris Jenkins, Head of Competition Advocacy, Office of Fair Trading.

5. **Inquiry into out-of-hours healthcare provision in rural areas (in private):**
The Committee will consider a draft report.

Douglas Thornton
Clerk to the Health and Sport Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5247
Email: Douglas.Thornton@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 1, 2 and 3**

Paper from the clerk

The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/33)

The Pharmacy Order 2010 (Commencement No.1) Order of Council 2010 (SI 2010/299 (C.24))

The General Pharmaceutical Council (Constitution) Order 2010 (SI 2010/300)

**Agenda Item 4**

Note by the clerk

Submission from ACPOS

Submission from City of Edinburgh Council

Submission from Glasgow City Council Licensing Board

Submission from West Dunbartonshire Licensing Forum

Submission from the Law Society of Scotland

Submission from the Office of Fair Trading

**Agenda Item 5**

PRIVATE PAPER

NHS Tayside supplementary submission

NHS Dumfries and Galloway supplementary submission
### Abridged Subordinate Legislation Briefing

#### Negavite Instruments

<table>
<thead>
<tr>
<th>Name</th>
<th>Deadline</th>
<th>Motion to Annul</th>
<th>Purpose</th>
<th>Drawn to attention by Subordinate Legislation Committee (SLC)?</th>
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<tr>
<td>The National Health Service (General Dental Services) (Scotland) Amendment Regulations 2010 (SSI 2010/33)</td>
<td>22 March</td>
<td>Yes</td>
<td>These Regulations amend the National Health Service (General Dental Services) (Scotland) Regulations 1996, which make provisions as to the arrangements under which dentists provide general dental services under the National Health Service in Scotland. These Regulations provide for the removal of the provisions allowing a continuing care arrangement or a capitation arrangement to lapse.</td>
<td>The SLC had no comments to make on this instrument</td>
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<tr>
<td>The Pharmacy Order 2010 (Commencement No.1) Order of Council 2010 (SI 2010/299 (C.24))</td>
<td>22 March</td>
<td>No</td>
<td>This Order brings into force on 12th March 2010 the amendment to Schedule 6 to the Health Act 2006 (c.28) that is made by paragraph 12(b) of Schedule 4 to the Pharmacy Order 2010 (“the Order”). This amendment enables the Appointments Commission to exercise the Privy Council’s functions under paragraph 1(2) of Schedule 1 to the Order to appoint members of the General Pharmaceutical Council.</td>
<td>The SLC had no comments to make on this instrument</td>
</tr>
<tr>
<td>The General Pharmaceutical Council (Constitution) Order 2010 (SI 2010/300)</td>
<td>22 March</td>
<td>No</td>
<td>This Order makes provision with regard to the constitution of the General Pharmaceutical Council (“the Council”). The Council is to consist of 7 registrant members who are pharmacists or pharmacy technicians entered in the register established and maintained under article 19 of the Pharmacy Order 2010 (S.I.2010/231) and 7 lay</td>
<td>The SLC had no comments to make on this instrument</td>
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members (article 2). The terms of office of the members will be determined on appointment by the Privy Council or, if directed by the Privy Council to do so, the Appointments Commission. There are limitations on the period for which members may serve on the Council (article 3). The Council is to make provision with regard to the education and training of its members in standing orders (article 4).

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Where instruments have been drawn to the Committee’s attention, the relevant extract from the SLC report is given as an annex to this paper. If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Government in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible.
Note on oral evidence received by the Health and Sport Committee on Wednesday 10 March 2010

Introduction

1. On Wednesday 10 March 2010 the Health and Sport Committee took oral evidence from three panels of witnesses on the Alcohol etc. (Scotland) Bill.

2. The first panel of witnesses included John Beard, Chief Executive of Whyte and Mackay Ltd. The third panel included Tony McElroy, Corporate Affairs Manager with Tesco plc.

Whyte and Mackay written and oral evidence

3. In their written submission received as part of the Committee call for evidence on the Bill, Whyte and Mackay stated:

“At a minimum price of 50p per unit of alcohol, a bottle of own label whisky would rise an astronomical 37.5% to a retail price of £14. At that level, quality own label loses its competitive advantage and would be competing in the same price range as premium brands such as Famous Grouse and Bell’s Whisky.

If given the choice, most consumers will opt for the premium brands at the same price. That being the case, the role and need for own label products disappears altogether. We have had it on good authority that supermarkets would likely delist own label products if the competitive advantage was lost and demand shifted to premium whisky.

As the leading supplier of own label whisky, this would be disastrous for our business.

We anticipate that our bottling plant in Grangemouth, which employs 200 people, would close. Our production levels would also be affected so there would be a knock-on effect at our distilleries. Our best estimate is that another 100 jobs would be at risk.”

4. During the oral evidence to the Committee on 10 March John Beard, Chief Executive of Whyte and Mackay, highlighted this in response to a question from Mary Scanlon MSP regarding the potential for 300 job losses at Whyte and Mackay based on the introduction of a minimum price of 50p.

5. Later on 10 March Whyte and Mackay added to this information with a press statement to the media clarifying that this estimate was based on a UK-

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1 Whyte and Mackay written submission, page 2
wide introduction of a minimum sales price for alcohol as opposed to a minimum sales price in Scotland.²

Tesco evidence to House of Commons Health Select Committee inquiry

6. During evidence to the Committee on 10 March, Michael Matheson MSP raised the support expressed by Tesco plc in their evidence to the House of Commons Health Select Committee inquiry on alcohol with Mr Tony McElroy.

7. In evidence to the House of Commons Select Committee on 14 May 2009, Mr David North, Tesco’s Community and Government Director stated that Tesco was in favour on minimum pricing. This was referred to in paragraph 278 of the Committee’s final report, which is included here for information.

8. Paragraph 278 of the Health Select Committee report is as follows:

“Minimum pricing

278. 73% of those surveyed in the RCN/RCP Survey on Alcohol Treatment Services believed that the Government should take action on the sale of low priced alcohol.

The main policy witnesses advocated to curtail the sale of cheap alcohol and prevent supermarkets from using discounts as a way of competing for custom was minimum pricing. Most of the big supermarkets were opposed, but Tesco is in favour:

“Our position for some time now has been that we are very prepared to play an active and constructive role in discussions on minimum pricing or, indeed, the whole issue of pricing. What we have said is two things really. One is that for that to be effective it has to be done across the industry rather than on a unilateral basis, but, second, for reasons of competition policy, competition law, those are not things, frustratingly, that the industry can lead by themselves those discussions have to be led by government.”³

Seán Wixted
Assistant Clerk
11 March 2010

² [http://news.bbc.co.uk/1/hi/scotland/8558421.stm](http://news.bbc.co.uk/1/hi/scotland/8558421.stm)
³ House of Commons Health Committee, First Report of Session 2009-10 - Alcohol [http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/151/15113.htm#a57](http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/151/15113.htm#a57)
I refer to your correspondence dated 2 December 2009 in connection with the above subject, which has been considered by members of the Operational Policing Business Area and can now offer the following by way of comment.

It should be noted that we have chosen to provide comment on the headings which describe the main purposes of the Bill. Having previously been consulted on proposals for reform, for brevity, these comments have been hyperlinked within this response and provided as appendices.

**Introduce a minimum sales price for a unit of alcohol (sections 1 & 2 of the Bill).**

ACPOS is supportive of this provision. Throughout the country, we see alcohol sold for as little as 50p per shot. Any mechanism which slows down the sale and consumption of alcohol should be supported.

Previous comment, given in September 2008 in response to the Scottish Government consultation on ‘Changing Scotland’s relationship with alcohol’ is accessible below:

0001816 - Previous ACPOS comment - Introduce a minimum sales price for a unit of alcohol.doc

**Introduce a restriction for off-sales on supply of alcoholic drinks free of charge or at a reduced price (section 3).**

This would bring the off-sales trade into line with on-sales premises, remove any ambiguity that currently exists; and should be strongly supported.

Previous comment, given in September 2008 in response to the Scottish Government consultation on ‘Changing Scotland’s relationship with alcohol’ is accessible below:

0001816 - Previous ACPOS response - Introduce a restriction for off sales on supply of alcoholic drinks free of charge or at reduced price (section 3).doc

**Make provision in law with respect to the sale of alcohol to under 21s (section 8).**

ACPOS originally spoke out heavily in defence of this piece of legislation following pilots in Lothian and Borders, Fife and Strathclyde. However, once we closely evaluated the projects it was clear that these proposals were only
part of a much bigger strategy in respect of controlling supply of alcohol to under 18's. ACPOS therefore adopted a much softer approach in support of the Government, stating that this type of initiative was a useful tool in the box and would assist the police and local councils to address problems at a local level. In addition it could also be used to address problematic premises and allow Boards to impose a condition on a licence as a punitive measure against errant licence holders. We continue to support this section.

Previous comment, given in September 2008 in response to the Scottish Government consultation on ‘Changing Scotland’s relationship with alcohol’ is accessible below:

0001816 - Previous ACPOS response - Make provision in law with respect to the sale of alcohol to under 21s (section 8).doc

Restrict the location of drinks promotions in off-sales premises (section 4).

Previous comment, given in September 2008 in response to the Scottish Government consultation on ‘Changing Scotland’s relationship with alcohol’ is accessible below:

0001816 - Previous ACPOS response - Restrict the location of drinks promotions in off sales premises (section 4).doc

Introduce a requirement for licence holders to operate an age verification policy (section 5).

ACPOS support this proposal.

Make provision in law for a social responsibility levy on licence holders (sections 10 & 11).

Previous comment, given in September 2008 in response to the Scottish Government consultation on ‘Changing Scotland’s relationship with alcohol’ is accessible below:

0001816 - Previous ACPOS response - Make provision in law for a social responsibility levy on licence holders (sections 10 and 11).doc

Caroline Scott
General Secretary
ACPOS
20 January 2010
I write in connection with the recently published Alcohol etc. (Scotland) Bill. Please find below our response to the Bill, which focuses on the practicalities of implementation of the policy should it be accepted by the parliament.

Part 1 – Alcohol licensing

Section 1 – Minimum price of alcohol

Should a minimum price for alcohol be introduced, there some issues that we feel warrant further scrutiny. For on sales premises there is no longer a legal requirement to display a pricelist, after the Price Marking Order (Food and Drink) Services Order 2003 was revoked in 2008. We are concerned about how the minimum price is calculated for a particular drink, and then how that price is passed on accurately to the consumer. We would support the re-introduction of legislation making the display of a price list mandatory in on sales premises – perhaps including a statutory format – and would request further information on how the minimum price of alcohol is to be notified to licensed premises. For example, for a beer delivery to a pub should the brewer be specifying in the delivery document the minimum price at which a pint of the beer is to be sold to the consumer? Or should the premises licence holder be working out the minimum price for a pint based on standard figures supplied. We are concerned that there is room for error and suggest that will require closer scrutiny.

We also feel that the formula provided for the calculation of the minimum price is not expressed clearly enough, and that within the Section the units to be used for the calculation of the strength are expressed as they are in the guidance notes to the Act. This would mean that Section 1(3) would state ‘S is the strength of the alcohol expressed as ABV/100’.

It is our view that if the policy objective is to be met the minimum price would need to be set higher than the example of 40p per unit currently used. At such a price a licensed premises can legally sell a triple vodka for £1.14, or a pint of strong lager for £1.16.

Section 2 – minimum price of packages containing more than one alcoholic product.

Should a minimum price be introduced it should also apply to multipacks of alcohol.

Section 3 – Off sales: restriction on supply of alcoholic drinks free of charge or at a reduced price
We believe that the Licensing (Scotland) Act 2005 as it currently stands does prohibit such offers under Schedule 3 (8(e)). The amendment proposed in this section of the Bill helps to reinforce and clarify the existing position in one respect. However, the disapplying of subsection Schedule 3 (8(e)) from off sales may lead to weaker controls. We would strongly recommend that that the application of subsection (e) to off sales is retained.

As part of the call for evidence we are asked for a view on the role of promotional offers and promotional material in encouraging people to purchase more alcohol than they intended.

Promotional offers are a fundamental aspect of the way that alcohol is now sold in Scotland. The majority, if not all, of off licence premises continually have promotional offers available. It is worth noting that under the principal legislation, a drinks promotions is any activity ‘which promotes or seeks to promote the buying or consumption of any alcohol on the premises’. We are of the opinion that the activity most prevalent, and most unsatisfactory, is the discounting of alcohol in off sales premises. For example, in Edinburgh recently some of the offers available have included:

- 3 for £10 on bottles of wine, where the individual bottles included in the offer have been up to £10 each. This results in a promotion of ‘buy one get two free’. Typically however, such offers will be for individual bottles of wine priced at £5-£7, and will still provide a substantial saving to the consumer.
- Some promotional activity relating to wine where the saving increases with the amount purchased. For example, the £3 for £10 offer described above was available online with a further discount, that allowed 6 bottles for £17.
- Some supermarkets ran ‘better than half price offers’ at Christmas time, which included a range of alcohol available at 60% discount against the typical selling price.
- The continual availability of multibuy promotions on wine, spirits and lager.
- Discounts that are only available on the purchase of more than one bottle of alcohol, as opposed to a discount on individual bottles if the purchaser wishes to buy only one.
- One offer where a litre bottle of spirits was discounted to the extent that it was cheaper to buy the litre bottle than it was to buy the 70cl bottle of the same brand.

It is our opinion that the manner in which off sales premises promote the purchase of alcohol seeks to encourage people to buy more alcohol than they intended. Our Licensing Standards Officers have advised that they believe that the Act as it currently stands restricts such offers in off sales premises. They are currently in discussion with a number of retailers about this very issue. They have advised that the they consider that the term ‘measure’, currently within Schedule 3 8 (2(e)) of the Act, can apply to off sales transactions, and are of the view that in order to ensure compliance with the
current legislation the deep discounting of alcohol in off sales premises currently prevalent in the trade must be curtailed.

Section 4 – Off sales: location of drinks promotions

At the previous consultation document of June 2008 we were asked for views on the display on licensed premises of promotional material relating to alcohol in a way visible to persons outside the premises.

It is unclear if the current proposal in Section 4 of the Bill is intended to achieve that aim. Many off licensed premises have one of their alcohol display areas as the window area of the shop. As it stands, the current proposal will allow for alcohol promotions to be displayed in a way visible to persons outside the premises, ie in shop windows facing the street. If the intention is to restrict such promotions, we feel this may be impractical in small and specialist off sales premises. It is unclear if this is the intention of the current proposal and therefore we cannot comment definitively.

Further clarification is required on the following:

1. Is a window area included?
2. Is the advert to be visible to someone outside the premises?
3. Is it the intention to restrict anyone outside of the display area from seeing the promotional material? If so, further consultation may be needed on format, size and placing of adverts in store, ie no posters hanging from the roof.
4. How will such a ban apply to internet sales?

Section 5 – Requirement for age verification policy.

We are of the opinion that this will only be effective if the policy is a written one. It should be linked into the Section 102 of the Act as part of the steps required to prove due diligence when an offence is committed, and also part of the mandatory staff training required. The policy should be written and available for inspection by Licensing Standards Officers.

Sections 6 and 7 – modification of mandatory conditions

No comment necessary

Section 8 – Off sales; sale of alcohol to Under 21s etc

We are still of the opinion that if the age restriction is not enforced it is immaterial what age restriction is set. Nevertheless, Licensing Boards having the opportunity to respond to specific local issues is a positive step. To this end the detrimental impact assessment is seen as a positive step and is one that we support. In subsection 6 the Board should provide a statement of reasons to the Licensing Forum if it declines the request to review the detrimental impact statement.
Previous consultation documents have raised the possibility of Trading Standards Officers being given the power to carry out test purchasing operations for alcohol. If that proposal, which we support, is to be introduced it should be done so along with an amendment to Section 7A (6) to allow the local authority to request a review of the detrimental impact assessment.

Section 9 – Premises licences: variation of conditions

As an enabling power this section is welcomed. However, it should also be the responsibility of the Licensing Board to notify the Licensing Standards Officer for the board area. As it is the role of the LSO to monitor the premises licence holders’ compliance with conditions of their licence they must be notified of any change to those conditions.

Part 2

Section 10 - Licence holders: Social responsibility levy

While agreeing in principle that premises should be responsible directly for their patrons – during dispersal or queuing for entry, and clearly while they are on the premises – we are not convinced that this should extend to a compulsory fee over and above licensing fees. Offences exist for over-consumption etc of alcohol with penalties through to revocation of the licence, which if enforced robustly should provide a deterrent.

As we know that the level of alcohol bought from off sales and consumed in houses is increasing steadily, we do not see how an objective assessment can be made of what premises is actually doing the harm. A social responsibility fee could also take the form of a fixed penalty notice on an individual who has committed a crime or antisocial behaviour while under the influence of alcohol.

In addition it is noted that the intention is for Civic Government licence holders to be subject to such a fee. It is unclear how this can be applied to those categories of licence holders given that the Licensing Objectives contained in the principal Act apply only to alcohol licensed premises.

Part 3

No response required.

Conclusion

Primarily the Bill introduces new mandatory conditions or amends existing ones. This will increase the involvement of the LSO substantially and therefore it may be that a commensurate increase in funding is necessary to ensure the role is fulfilled.
We have previously suggested that LSO powers are strengthened to include powers of seizure, and still maintain that this is a necessary step to ensure that the role is carried out effectively.

Should you wish to discuss these matters further please do not hesitate to contact me using the details at the foot of this letter.

Stephen Walker
Environmental Health and Trading Standards Manager
City of Edinburgh Council
19 January 2010
Alcohol etc. (Scotland) Bill
Submission from Glasgow City Council Licensing Board

The City of Glasgow Licensing Board welcomes the opportunity to comment on the general principles of the Alcohol Etc (Scotland) Bill. The Licensing Board recognises that alcohol misuse is a serious and widespread problem throughout Scotland and is committed to working with other interested stakeholders in order to try and tackle the social and health problems associated with alcohol misuse, particularly with regard to the Licensing Objective of Protecting and Improving Public Health.

The Licensing Board considers that in order to deliver long term sustainable change in relation to alcohol, key areas such as reducing alcohol consumption, supporting families and communities and improving support and treatment for those affected by alcohol require to be targeted. The Licensing Board considers that direct and effective action is required in order to tackle the cultural attitudes to alcohol across the country.

As the public body responsible for administering and regulating the liquor licensing system in the City of Glasgow, it would wish for the following issues to be taken into account in considering the general principles associated with the Bill:-

Section 1 Minimum Price of Alcohol

With regard to the proposals in relation to introducing a further mandatory condition on premises licences to the effect that alcohol must not be sold at below the minimum price, the Licensing Board considers that in order to be in any way effective, it would require to be introduced as part of a series of measures designed to tackle the problems associated with alcohol misuse, and in particular the cultural attitudes towards alcohol. The Licensing Board considers that a “one size fits all” approach will not provide a solution to these problems and that any such measures have to be part of a sustained and targeted educational programme.

The Licensing Board remains concerned that the introduction of minimum pricing could be contrary to European Union Law. The Licensing Board is aware that debate on this issue centres upon whether such proposals would have an impact on competition in the market but that such measures may be permitted if it is proportionate for a legitimate objective such as the promotion and protection of public health. The Scottish Government is therefore called upon to make public its position with regard to the Bill’s compatibility with EU law. The Licensing Board reiterates its call for a specialised task force to be set up through the Law Society to consider the legality of the proposal regarding minimum pricing.

With regard to the provisions contained within the Bill, the Licensing Board considers that the complexity of the proposed formula could lead to difficulties
in effective monitoring and enforcement of minimum pricing, particularly given the divergence in the strength and volume of alcoholic products now available. This could mean additional resources for Licensing Standards Officers will be required.

The Licensing Board also notes that the provisions relating to minimum pricing are to be extended to occasional licences. While the Licensing Board agrees with this in principle, it is concerned as to whether the complexity of the formula will be readily understood by voluntary organisations applying for occasional licences under section 56 of the Licensing (Scotland) Act 2005.

**Section 2 – Minimum Price of Packages Containing More Than One Alcoholic Product**

The Licensing Board adopts its comments above in relation to section 1 of the Bill.

The Licensing Board is concerned that there may be issues with regard to the interpretation of section 2 of the Bill which could lead to difficulties in terms of proper enforcement of the provisions. For example, it is unclear how the provisions will apply to cocktails in on-sales licensed premises – will the price of a cocktail require to be equal to or more than its individual components? It would also seem from the definition of “alcoholic product” that this includes the container, and therefore in terms of section 2(2)(a), the requirement for the package to be sold at a price equal to or greater than the sum of the pieces would only apply where the container itself was capable of being sold separately.

Furthermore, it would also seem that the wording of section 2 would act as a deterrent to premises selling items individually as opposed to being part of a larger package as the provision only applies where **all** of the alcoholic products are also sold individually. This would seem to have the perverse effect of encouraging licence holders to sell larger packages of alcohol than individual smaller units, thereby encouraging a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume, which is prohibited in terms of paragraph 8(2)(e) of Schedule 3 to the Licensing (Scotland) Act 2005. Clarification on this point is required.

**Section 3 – Off-Sales: Restriction on Supply of Alcoholic Drinks Free of Charge or at a Reduced Price**

The Licensing Board notes that section 3(2) of the Bill proposes to amend the provisions relating to irresponsible drinks promotions contained within paragraph 8(2) (b) of schedule 3 to the 2005 Act (the supply of an alcoholic drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcoholic drinks)) so as to apply to off-sales as well as on-sales. This proposal is welcomed by the Licensing Board. It is further noted that drinks promotions which encourage persons to buy or consume larger measures will now only apply to on-sales. The Licensing Board welcomes this proposal as providing some clarity on an issue which has
proved controversial in relation to the monitoring and enforcing of irresponsible promotions.

While the Licensing Board welcomes these amendments, it remains disappointed that this opportunity has not been used to further clarify the law relating to irresponsible promotions. In the view of the Licensing Board, the drafting of the provisions of paragraph 8 of Schedule 3 to the 2005 Act have opened up a number of loopholes in relation to irresponsible drinks promotions which licence holders can legitimately exploit as compared to the situation previously under the 1976 Act where the Licensing Board had its own policy in relation to drinks promotions which was clear and unambiguous and capable of being effectively enforced without questions of interpretation arising as is the case now.

**Section 4 – Off-Sales: Location of Drinks Promotions**

While the Licensing Board generally welcomes the proposals relating to further restrictions on the location of drinks promotions in off-sales licensed premises, so as to avoid any issue of interpretation arising it would seek clarity on the meaning of “in the vicinity of the premises” as referred to in section 4(3) of the Bill.

**Section 5 – Requirements for Age Verification Policy**

While the Licensing Board is aware of the widespread problems relating to underage drinking, it is concerned as to how effective these proposals will be in practice. The Licensing Board notes that the Bill proposes to add a further mandatory condition to premises licences to the effect that there must be an age verification policy in relation to the sale of alcohol on the premises. However, the Board is concerned that this will simply be a paper based exercise and that irresponsible licence holders who sell alcohol to persons under the age of 18 may at a review hearing before the Board use the existence of such a policy as a defence that they took all reasonable steps to avoid underage sales occurring.

**Section 6 and 7 – Premises Licences and Occasional Licences: Modification of Mandatory Conditions**

The Licensing Board welcomes the provisions which will allow the Scottish Ministers to amend the Mandatory Conditions which apply to premises licences and occasional licences.

**Section 8 – Off Sales: Sale of Alcohol to Under 21’s etc**

The Licensing Board notes the proposals which would require the Licensing Board to include a detrimental impact assessment in its Licensing Policy Statement which would set out the extent to which the Licensing Board considers that off-sales to persons under the age of 21 in its area, or any locality in its area, is having a detrimental impact in that area or locality. While the Licensing Board agrees that there are widespread problems associated
with under age drinking and youth antisocial behaviour and disorder, and that the carrying out of a detrimental impact assessment may provide a useful assessment of these issues in order to assist in the development of other aspects of the Board’s policy, there may be some difficulty in objectively justifying that antisocial behaviour in a particular locality emanates from persons under the age of 21 to whom alcohol has been sold as off-sales and not as on-sales. It is recognised, however, that information from both the Police and the Local Authority may be able to assist with this.

With regard to the variation of premises licences so as to include a condition that off-sales of alcohol shall not be sold to persons under the age of 21, there may be some practical difficulty were this applied only in certain parts of a Board’s area, thereby potentially moving antisocial behaviour problems elsewhere. Equally, however, the Licensing Board may have difficulty in justifying a blanket approach in varying all affected premises licences across the entire Board area.

Section 9 – Premises Licence: Variation of Conditions

The Licensing Board has been concerned for some time that no procedure exists within the Licensing (Scotland) Act to amend or attach local conditions on premises licences without a Review Hearing which would require one of the grounds for review to have been established. While the Licensing Board generally welcomes the proposals contained within section 9 of the Bill, there could be issues with regard to whether it would be a breach of natural justice for a quasi-judicial body to unilaterally enforce conditions on a premises licence without the licence holder having the opportunity to make representations. Considerations should be given to including a mechanism for the Licensing Board to advise licence holders of its intention to attach or amend conditions, and that unless representations are made, the changes will apply from a certain date. Where representations are made, the provisions could allow for a hearing before the Board. A similar approach to that contained within paragraph 10 of schedule 1 to the Civic Government (Scotland) Act 1982 (Variations of Licences) should be considered

The Licensing Board also questions whether the wording for the proposed new section 27A of the 2005 Act directly conflicts with the terms of section 27(7) which provides that the Licensing Board cannot apply conditions which are inconsistent with the mandatory conditions.

Sections 10 and 11 – Social Responsibility Levy

The Licensing Board agrees that there is merit in requiring some alcohol licence holders to contribute financially to the furtherance of the Licensing Objectives and the costs to the Local Authority of dealing with the adverse consequences of alcohol misuse. However, the Licensing Board seriously doubts that it is legitimate to extend this to licences not covered by the Licensing (Scotland) Act 2005 to which the licensing objectives do not apply (i.e public entertainment licences and late hours catering licences, both of which are licensed under the Civic Government (Scotland) Act 1982.)
It is noted that the detailed provisions relating of the implementation of the social responsibility levy are to be included within regulations, but the Licensing Board would ask that the following issues are taken into account and addressed so as to make any such levy as effective as possible-

- If the criteria set relates to identifying certain localities as “hot spots”, for example certain city centre locations, then this would capture all licensed premises within that locality, subject to the local authority determining that individual premises should be exempt from the application of the fee.

It may be suggested that the Police could provide similar antisocial behaviour reports to those provided in terms of section 21 of the 2005 Act in order to identify areas where there is a particular problem with antisocial behaviour. However, the Licensing Board’s experience with the section 21 reports has been that it is often difficult or impossible for the Police to establish whether there is any causal link between the incidence of antisocial behaviour in a locality and the management and operation of individual licensed premises.

It is strongly arguable that applying a blanket fee to those premises in a certain locality without establishing any element of culpability could serve to punish those premises which apply the most stringent measures to prevent underage sales, promote responsible product stocking, provide additional stewarding arrangements etc. However, determining which licensed premises within a hot spot locality should be given an exemption without any empirical evidence as to culpability could prove to be a very subjective exercise and would likely be open to challenge.

- Likewise, to target late opening premises could unduly prejudice premises which have put in place measures as above to combat and prevent antisocial behaviour etc from occurring. It is difficult to see what criteria could be devised for considering exemptions so as to avoid anything but a subjective approach.

- With regard to identifying criteria to determine the “types of premises” that should be the subject of the fee, in the view of the Licensing Board it would be impossible to determine whether premises fall within that criteria or not. As there is only a single generic Premises Licence and Licensing Boards are unable to distinguish between licensed premises based on Operating Plans which do not provide any detail as to the ‘principal discernable activity’ taking place on the premises (contrary to recommendations made in that regard by this Board) or to any of the activities and entertainment taking place on the premises, it would be all but impossible to categorise premises in advance as those which are likely to cause or contribute to antisocial behaviour etc.

- The Licensing Board is of the view that if there is evidence to suggest that there is a direct link between crime, antisocial behaviour or other forms of public nuisance and individual licensed premises then it would review the
licence under either section 36 or 37 of the 2005 Act and take action as appropriate, which could include suspension or revocation if such action were proportionate to the offending conduct. The Licensing Board has been given wider powers under the 2005 Act to carry out a review of premises licences and therefore a commitment by Licensing Boards to utilising their powers could be an effective means of dealing with premises which have contributed to antisocial behaviour etc, as well as sending out a strong message to the trade as a whole that poor managerial control will not be tolerated. Criticisms may be levelled that premises are effectively being punished twice if they are the subject of both enforcement action and a levy payment.

- With regard to the proposal that a social responsibility levy should be attached to Occasional Licences as well as Premises Licences, this would suggest that events are being held which the Licensing Board considers could lead to antisocial behaviour etc. The Licensing Board has raised concerns in previous consultation responses, and directly with the Cabinet Secretary for Health and Justice, that under the 2005 Act it has no discretion to refuse to grant an occasional licence (for example for a large event in connection with a national sporting event) in the absence of an adverse report from the Police or Licensing Standards Officers. There is therefore a certain absurdity in providing local authorities with the power to charge a fee for occasional licence events where they believe there may be some adverse impact but not afford the Licensing Board the power to refuse to grant the application in the first place. This highlights a clear lacuna in the regulatory powers of Licensing Boards.

The Licensing Board also notes that the levy is only to be imposed in respect of expenditure incurred by any “local authority” which does not include either the Police or the NHS. Further detailed consideration would require to be given to where the costs associated with alcohol misuse are incurred.

Mairi Millar
Clerk
City of Glasgow Licensing Board
20 January 2010
Alcohol Etc (Scotland) Bill

Submission from West Dunbartonshire Licensing Forum

With reference to the above Committee’s call for written evidence from groups following consideration of the general principles of the Alcohol Etc (Scotland) Bill which was introduced by the Scottish Government on 25 November 2009, copies of the Alcohol etc (Scotland) Bill and the Policy Memorandum were circulated to Members for information.

The Forum’s Sub-Group, having considered the points detailed in the ‘Call for Evidence’, expressed the under noted views on the Bill:-

- **The advantages of establishing a minimum alcohol sales price based on a unit of alcohol;**

The Sub Group was unanimous in its support for establishing a minimum sales price based on a unit of alcohol.

The following opinions/points for information were expressed by Members of the Sub-Group:-

- that, in theory the establishment of a minimum sales price would remove the purchasing of alcohol for certain groups of people;
- that establishing a minimum alcohol sales price would provide a level playing field for both on and off trade;
- that it would prevent supermarkets selling at below cost price and using alcohol promotions as a marketing tool;
- that in time it would help restore the general public’s attitude towards alcohol and aid the process of people respecting alcohol;
- that other countries have successfully set a minimum sales price for alcohol including Russia;
- it was thought that setting a minimum price would stop people buying large amounts of alcohol at supermarkets for consumption at home thus reducing the problems associated with excessive consumption of alcohol at home i.e. help towards reducing the incidence of domestic violence, etc.;
- that it would help towards tackling problems associated with the damaging levels of consumption of alcohol and the cost of alcohol misuse to Scotland’s public services and economy as backed and supported by health service specialists and police chiefs;
- that it would reduce the volume of alcohol being stored at home thus preventing children/persons under the age of 18 removing alcohol from the stock held at home for their own personal consumption; and
- that it would ban drinks offers “such as buy one get one free” and prevent use of alcohol as a “loss leader”.
• **The disadvantages of establishing a minimum alcohol sales price based on a unit of alcohol;**

The following opinions/points for information were expressed by Members of the Sub-Group:-

- that it may have an impact on crime;
- that it may lead to the unregulated sale of cheap alcohol being purchased across the border; and
- that it would mean sensible drinkers are penalised by an increase in the price of alcohol.

• **The level at which such a proposed minimum price should be set and the justification for that level**

The Sub-Group agreed that £0.35 was an effective level to set the minimum price per unit of alcohol.

The following opinions/points for information were expressed by Members of the Sub-Group:-

- that this would raise the cost of the cheapest ciders and other alcoholic drinks favoured by problem drinkers;
- that this would be an acceptable level for on sales and off sales trade; and
- that this would not exclude people who drink sensibly.

• **The rationale behind the use of minimum pricing as an effective tool**

The following opinions/points for information were expressed by Members of the Sub-Group:-

- It was reported that global evidence based research indicated that minimum pricing does work;
- that it would assist in meeting the criteria of the health objective in the Licensing (Scotland) Act 2005;
- that some of the tax gained from the increase in the price could be diverted to health promotion by the government: one suggestion being a reduction in the price of fruit and vegetables;
- that if tax duty only was increased then supermarkets would be unaffected due to their practice of below cost selling. It was therefore felt that setting a minimum price for alcohol would force irresponsible retailers to retail alcohol products in a more responsible manner; and
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17 March 2010  

- that setting a minimum price for alcohol would control irresponsible promotions in both on sales and off sales premises.

• **Possible alternatives to the introduction of a minimum alcohol sales price as an effective means of addressing the public health issues surrounding levels of alcohol consumption in Scotland**

  - Following discussion the Sub-Group agreed that there were no possible alternatives to the introduction of a minimum alcohol sales price and that irresponsible promotions would continue without the introduction of a minimum alcohol sales price.

• **The advantages and disadvantages of introducing a social responsibility levy on pubs and clubs in Scotland**

  The following opinions were expressed by Members of the Sub-Group:-

  - that should a social responsibility levy be agreed, then it should be applied to all licensed premises and not just pubs and clubs;
  - that all outlets selling alcohol could be rated;
  - that the social responsibility levy should apply to all premises selling alcohol;
  - that the social responsibility fee should be apportioned to specific premises which may be a locus for anti social behaviour as a result of alcohol misuse; and
  - that a social responsibility fee should be proportioned to off sales premises at the end of the year depending on the sales of alcohol for that year.

• **The justification for empowering licensing boards to raise the legal alcohol purchase age in their area to 21**

  The following opinions were expressed by Members of the Sub-Group:-

  - that raising the legal alcohol purchase age to 21 was a useful tool for Licensing Boards to use as a punishment for irresponsible licence holders;
  - that the Licensing Boards could use the increase in purchase age to 21 as a tool and would be required to justify raising the purchase age with evidence;
  - that it could not be applied as a blanket to all licensed premises in the Licensing Board area; and
  - that it could lead to an increase in the incidence of agency purchase in a Licensing Board area.

• **The role of promotional offers and promotional material in encouraging people to purchase more alcohol than intended**

  - Following discussion the Sub-Group agreed that promotional offers and
promotional material definitely encouraged people to purchase more alcohol than intended.

Other aspects of the Bill which were discussed by the Sub-Group

- **Age Verification Policy**

  Following consideration, it was suggested that there should be compulsory identification cards for everyone under the age of 25.

- **Power of Board to Vary Premises Licence Conditions**

  Following consideration, it was suggested that Boards should have the power to Vary Premises Licence Conditions retrospectively e.g. all pubs must join the pub watch scheme if there is one operating in their area. It was agreed that this would be useful for Boards as long as it was not used as a barrier to licence holders and, in addition, it was felt that there should be some level of appeal for licence holders.

  It was also agreed that this would afford the Board the right to apply conditions to licences without the need for a Board Hearing.

Michael McHugh
Chairperson
West Dunbartonshire Licensing Forum
19 January 2010
Alcohol etc. (Scotland) Bill

Submission from the Law Society of Scotland

INTRODUCTION

The Law Society of Scotland (“The Society”) welcomes the opportunity to comment upon the Alcohol Etc (Scotland) Bill as introduced in the Scottish Parliament on 25 November 2009 and has the following comments to make upon its terms.

GENERAL COMMENTS


Copies of the Society’s response to the consultation paper can be made available to members of the Parliament’s Health and Sport Committee.

The Society should like to respond to the terms of the Bill as follows.

SPECIFIC COMMENTS

Section 1 – Minimum Price of Alcohol

The Society notes the policy objective of minimum pricing to protect and improve public health by reducing alcohol consumption. The Society has had an opportunity to consider the issue of minimum price of alcohol as outlined in Section 1 of the Bill.

In particular, the Society notes that the minimum price of alcohol is set as the purchase price available to the purchaser and calculated in accordance with the formula as set out in Schedule 3, 6A(3) of the Licensing (Scotland) Act 2005 (“The 2005 Act”) as amended by Section 1(2) of the Bill where, in terms of paragraph 6A(4), the minimum price per unit is such price as Scottish Ministers may by order specify.

It can therefore be construed as not being a matter of competition law as effectively Scottish Ministers fix the price as opposed to licence holders.

Accordingly this is a devolved matter within the legislative competence of the Scottish parliament.

The Society, however, notes that there are issues raised by the imposition of minimum pricing at EU level.
This brings into focus the compatibility or otherwise of the Scottish Government’s proposals with the obligation of the United Kingdom under the Alcohol Duty Directive (92/83/EEC) and (since the coming into force of the Treaty of Lisbon on 1 December 2009) Articles 34 and 36 of the Treaty on the Functioning of the European Union namely:-

Article 34

“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States”

Article 36

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transits justified on grounds of public morality, public policy or public security, the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States;

The Society notes that the issue of compatibility of the proposal under Section 1 of the Bill of European Union Law has been brought into sharp focus as a result of Advocate General Kokott’s opinion concerning the pricing of tobacco products (joint cases 197/08, 198/08 and 221/08 Commission v France, Austria and Ireland).

The Society further notes, however, that opinions in these cases are yet to be issued by the European Court of Justice, but that opinions should be issued in the near future.

In the tobacco cases, Advocate General Kokott observed:

“The decisive question is whether the measures at issue (which in this instance would be the minimum pricing of alcohol) to achieve the protection of public health, or whether there are equally suitable, but less restrictive alternatives”, and “It must be recognised that the Member States can determine the level at which it would like to protect public health and how that level is to be achieved”.

In that respect Member States enjoy considerable discretion.

In the above cases, the view of the Advocate General was, however, that

1. by maintaining in force a system of minimum price for cigarettes and a prohibition on selling tobacco products at a promotional price, which is contrary to public health objectives, the French Republic failed to fulfil its obligations under the Tobacco Duties Directive;
2. by enacting and retaining legal provisions under which minimum selling prices for cigarettes and for fine cut tobacco for the rolling of cigarettes are set by the State, the Republic of Austria failed to fulfil its obligations under the Tobacco Duties Directive: and

3. by imposing minimum retail prices for cigarettes, Ireland failed to fulfil its obligations under the Tobacco Duties Directive.

The Society notes that Madame Kokott’s opinions are with regard to the Tobacco Duty Directive 95/59/EC and that the structure for duty for tobacco is different from that for alcohol which is set out in terms of the Alcohol Duty Directive 92/83/EEC in that tobacco duty is a function of the maximum retail price of tobacco, a maximum which the Directive requires the manufacturers to be free to set.

Alcohol duty is based, however, on the volume of alcohol as opposed to its price and accordingly interference with pricing of alcohol may not affect the duty regime in the same way as it does in the case of tobacco. However, it is not only the compatibility with the EC Duty Directives which require to be taken into account in fixing a minimum price but also the legal issues concerning the free movement of alcohol.

With regard to free movement, the terms of the EU Treaty have been interpreted by relevant case law as setting a number of questions (in this instance, these questions would be applied to the minimum pricing of alcohol).

1 Is this a measure having equivalent effect to a quantitative restriction on imports?

2 If so, is it capable of being justified on grounds of public policy or public security, the protection of health and life of humans, while not constituting “a means of arbitrary discrimination or a disguised restriction on trade between Member States”?

3 If so, does it operate as a restriction only to an extent that is proportionate to the legitimate objective pursued (put differently) is it really impossible to achieve the objective in a way that causes less disruption or disadvantage to trade in imported products?

The Society takes the view that, in answer to the first question, this measure would have an equivalent defect to quantitative restriction of imports. It may be argued that minimum pricing as set out in Section 1 of the Bill could be challenged successfully on the following grounds:

i. Minimum pricing reduces the price advantage of non premium products over premium products.

ii. Minimum pricing is a measure having equivalent effect to a quantitative restriction on imports.
i. The effect of deterring consumption by increasing the cost of alcoholic liquor could be achieved with less or no impediment to imports simply by increasing duty across the Board (the Society notes that this is the European Commission’s view).

iv. Even if minimum pricing were acceptable, it should be fixed by reference to volume rather than the British “unit”.

v. That the proposal is therefore not a proportionate response.

The Society further notes, however, that minimum pricing as set out in Section 1 of the Bill may be justified on the following grounds:

i. Minimum pricing legislation may well be a measure having equivalent effect, but Article 36 of the European Union Treaty referred to above should be taken into account.

ii. The health and public order issue is not simply that people drink too much alcohol but that there is credible evidence that certain identified health and public order problems are attributable to a significant extent to certain identified patterns of purchase of alcohol.

iii. The proposed minimum pricing legislation is a fine tuned measure that precisely targets those patterns and there is credible evidence that it will disrupt them and thereby diminish the incidence of the identified health and public order problems on the basis that it treats equally all types of alcoholic drink such as beers, wines, spirits and tonic wines.

iv. The “unit” to be defined in the pricing order as 10 millilitres of ethyl alcohol is a simple volume of measure with an objective scientific basis being (in that case) the amount that the human body can break down in one hour.

v. In all the circumstances, the proposed minimum pricing legislation as set out in Section 1 of the Bill is a less disproportionate response to the identified problem than would be an across the Board increase in duty.

In all the circumstances, the Society holds that these are the issues arising from Section 1 and that the issue of law arising from Section 1 is a matter which is yet to be determined by the European Court of Justice.

With regard to enforcing the minimum price of alcohol, the Society is of the view that Licensing Standards Officers will have difficulty in enforcing the proposed mandatory condition of a premises licence that alcohol must not be sold on the premises at a price below the minimum price.

Also, is a licence holder in breach of paragraph 8(2)(e) of Schedule 3 to the 2005 Act by encouraging or seeking to encourage a person to buy or consume a larger measure of alcohol than the person had otherwise
intended to buy or consume by, for example, offering food or other non alcoholic products with alcohol?

This point, in the Society’s view, requires clarification.

The Society also notes that the use of both ‘sold’ and ‘supplied’ requires clarification.

**Section 2 – Minimum price of packages containing more than one alcoholic product**

The Society refers to its comments above. It is the Society’s view that the proposal as set out in Section 2 of the Bill restricts specific types of promotion to consumers and accordingly is a law which is aimed at the conduct of the seller. Accordingly, this measure relates to consumer protection and competition law and is reserved to the United Kingdom Parliament. The Society is concerned that this proposal has the potential to create two separate markets within the United Kingdom for alcohol products as it may lead to shoppers purchasing in England and Wales to take advantage of savings not available in Scotland. This is a real possibility in view of the existence of internet retailing and ease of transportation between Scotland and England.

With particular reference to paragraph 6(B)(3) of Schedule 3 to the 2005 Act as inserted by Section 2(2) of the Bill, the Society welcomes clarification as to whether the container which can be included in the package has to be capable of being sold separately for the purposes of calculating the cost of the package.

The Society also believes that one of the unintended consequences of Section 2, if enacted, would be to discourage licence holders from selling items individually as Section 6(B)(1) only applies where each of the alcoholic products is for sale on the premises separately. This may, conversely, encourage a person to buy a larger measure of alcohol than the person had otherwise intended to buy and may be considered an irresponsible drinks promotion in terms of paragraph 8(2)(e) of Schedule 3 to the 2005 Act.

**Section 3 – Off-sales: Restriction on supply of alcoholic drinks free of charge or at reduced price**

The Society notes that Section 3(2) of the Bill extends the application of paragraph 8(2)(b) of Schedule 3 of the 2005 Act to include off-sales. Moreover, drinks promotions encouraging persons to buy or consume larger measures will now only apply to alcohol sold on the premises.

The Society notes that “measure of alcohol” is undefined, and on the basis that it is now to apply to on-sales, it requires clarification.

The Society would also question whether the restriction on supply of alcoholic drinks free of charge would in effect prohibit tastings in off-sales premises.
Section 4 – Off-sales: Locations of drinks promotions

The Society notes this proposal seeks to extend the provisions of paragraph 13 of Schedule 3 to the 2005 Act (as inserted by the Licensing (Mandatory Conditions 2) (Scotland) Regulations 2007 (SSI 2007/546)) to provide that any drinks promotion in respect of off-sales of alcohol in a premises may take place only in the alcohol display areas, or any tasting rooms such as those operated by some specialist retailers. Regard requires to be paid to e.g. beer gardens which are normally unlicensed and therefore taking alcohol outside becomes an off-sale transaction.

With regard to the definition of “drinks promotion”, the Society believes that this should be correctly defined as “off-sales drink promotion” as “drinks promotion” is defined in paragraph 8(5) of Schedule 3 to the 2005 Act. The Society refers to its comments above with regard to beer gardens.

The Society seeks clarification with regard to the terms of paragraph 13(1)(B) as inserted by Section 4(3) of the Bill. The Society questions whether tastings will be permitted on the shop floor or whether a licence holder requires to provide a separate room for tasting, and if that room requires to be fixed or flexible to meet the particular circumstances of the tasting.

This brings into focus the question of whether signage simply advertising the premises as licensed premises will be permitted.

The Society also seeks clarification as to whether advertising of e.g. wine clubs, wine, beer and spirits etc by way of supplements in national newspapers and magazines etc will be permitted given the terms of Section 4.

There is also the issue of television and radio advertising of alcohol to consider.

Section 5 – Requirements for age verification policy

The Society notes that Section 5(2) inserts a new paragraph 9(A) to Schedule 3 to the 2005 Act to impose a further mandatory condition of premises licence in that there must be an age verification policy in relation to the sale of alcohol on the premises.

The Society also notes that certain premises already operate such premises voluntarily and questions whether the requirement to operate such a policy requires to be a mandatory condition of a premises licence.

The Society refers to Section 102(1) of the 2005 Act whereby it is an offence for a person to sell alcohol to a person who is under the age of 18, subject to the defence as outlined at Section 102(2) of the 2005 Act.

The Society questions why there is any requirement for this additional condition of premises licence taking into account the terms of Section 102 of the 2005 Act.
A premises licence holder may curiously find himself or herself subject to a review of the premises licence on the basis that he or she did not have an age verification policy in place with regard to premises where no sale of alcohol to a child or young person had actually taken place. The Society also highlights Section 102 which requires the licence holder to take reasonable steps to establish the child or young person’s age and that this is covered in compulsory training.

The Society further notes that such a policy will require to be put in place for holders of occasional licences.

The Society also notes that the 2005 Act only came into effect on 1 September 2009 and many provisions, not least those relating to underage sales and consumption, have not had a sufficient period of time to be properly evaluated.

**Sections 6 and 7 – Premises licences and Occasional licences: Modification of mandatory conditions**

The Society notes that Section 6 (Premises Licences) and Section 7 (Occasional Licences) will now amend Section 27 and Section 60 of the 2005 Act respectively in order to allow the Scottish Ministers to delete or amend conditions contained in Schedules 3 and 4 of the 2005 Act. The Society notes that, at present, Scottish Ministers can only add or extend the application of mandatory licence conditions for premises licences in Schedule 3 and for occasional licences in Schedule 4. The Society welcomes these provisions.

**Section 8 – Off-sales: Sale of alcohol to under 21’s etc.**

The Society is concerned from a practical point of view as to how a Licensing Board includes in its licensing policy statement to be published in terms of Section 7 of the Act, a detrimental impact statement as to the extent to which the Board considers that off-sales to persons under the age of 21

(a) in its area; or
(b) in any locality within its area

are having a detrimental impact in that area of locality.

It is clear from the terms of the new Section 7(A) of the Act as inserted by Section 8(3) of the Bill that, in preparing a detrimental impact statement, the Board must consult with the local licensing forum and, at its request, the Chief Constable or the relevant Council must provide to the Board such statistical or other information as the Board may reasonably require for the purpose of preparing or reviewing a detrimental impact statement.

The question arises as to how the Board, upon receipt of such information, can properly and reasonably identify and pinpoint any locality within its area where off-sales to under 21s are having a detrimental impact. Detrimental
impact is defined in Section 7(A)(2)(b) as any adverse effect on one or more of the licensing objectives.

In particular, it would be difficult for the Board to make such a statement upon information which does not disclose that anti social behaviour which emanates from those persons under the age of 21 to whom alcohol has been sold.

The Society suggests that if such a condition were to be imposed upon licensed premises in respect of off-sales, then it could be attached as a condition following a review of the premises licence in terms of Section 39 of the Act.

The Society further outlines the practical difficulty of the imposition of this blanket condition where premises licences have both an on and off-sales facility and accordingly, this would bring into place two age limits dependent on whether the alcohol is sold for consumption on or off the premises. The beer garden issue would also apply.

The Society identifies a further practical difficulty where a detrimental impact assessment applies in one locality of a Board’s area, but not in another in that those persons under 21 wishing to purchase alcohol will simply do so from a neighbouring locality within the Board’s area which is not subject to a premises licence variation of conditions in terms of Section 9.

**Section 9 – Premises licence: Variation of conditions**

The Society refers to its comments above. In particular, the Society notes that, unlike review of procedure in terms of Sections 36 to 40 of the 2005 Act, there is no provision to afford the licence holder a hearing and, furthermore, there is no appeal. The Society notes the terms of Section 27(7) of the 2005 Act where a Licensing Board may not impose a premises licence condition inter alia which would have the effect of making any such condition more onerous or more restrictive than the mandatory conditions as contained in Schedule 3.

The Society therefore questions the imposition of Section 27A as inserted by Section 9(1) of the Bill allowing Licensing Boards to vary premises licence conditions. The variation can apply to all licensed premises without the premises licence holder being afforded the right to be heard nor afforded the right to appeal against the decision to vary. The Society believes that a suitable mechanism must be put in place in order to afford protection to premises licence holders who object to a variation being made under the new Section 27(A).

**Sections 10 and 11 – Social responsibility levy**

The Society questions whether holders of licences other than premises licences can be called upon to contribute to the in that the purpose of the levy is to meet or contribute to expenditure incurred or to be incurred by any local
authority in furtherance of the licensing objectives and 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 businesses or relevant licence holders in the authority’s area.

Such licence holders defined as “relevant licence holders” at Section 10(2)(b)(c) and (d) of the Bill are not subject to the licensing objectives which are contained only in the 2005 Act.

The Society notes that the regulations are to be made by Scottish Ministers by statutory instrument for the imposition of these charges upon relevant licence holders, but questions how such a scheme can operate in practice and be fairly imposed, particularly where there are a number of premises licences and other relevant licence holders whose sale of alcoholic liquor or overall participation in night time economy is negligible.

Alan McCreadie
Deputy Director
Law Reform
19 January 2010
1. The OFT is the consumer and competition authority for the UK as a whole. Our mission is to make markets work well for consumers. Intervention by the OFT is designed to support the development of competitive efficient innovative markets. These are markets where customer care is high, consumers are empowered about making choices, and businesses are not disproportionately burdened by government regulations. We look at both the demand and supply sides of markets because where empowered consumers are able to make informed decisions businesses are more likely to innovate, reduce inefficiencies and compete in ways which make markets work well for consumers and the wider economy.

2. We acknowledge the evidence of the harmful effect of excessive alcohol consumption and the concern of the Scottish Government to try to reduce that harm. However, the OFT has a number of concerns about the use of a minimum sales price for a unit of alcohol to achieve this end, which we thought it would be helpful to share with the Committee. The nature of the OFT’s remit limits our submission on the Alcohol etc. (Scotland) Bill to commenting on the competition and market impacts of this proposal.

Expected impacts of a minimum price for alcohol

3. The Competition Assessment in the Scottish Government’s Regulatory Impact Assessment (the Competition Assessment) reflects many of the matters of concern to the OFT. In particular we would like to draw the Committee’s attention to the following points which could impact on all consumers of alcohol, including responsible drinkers:

4. As acknowledged by the Scottish Government the Sheffield Report ‘predicts that all minimum price scenarios modelled result in increased revenue for the alcohol industry (off-trade and on-trade).’ The Competition Assessment suggests the possibility that retained profits are passed on to consumers through lower prices/higher quality on other products. However, this is not the only effect. Another possible outcome is that higher revenues increase the incentives for retailers to sell more alcohol (due to relatively higher returns). This is explicitly recognised in the recent House of Commons Health Select Committee report on alcohol, which, though in favour of minimum pricing, recognises:

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2 Competition Assessment, para 30
3 Competition Assessment, para 32
4 First Report of Session 2009-10 on Alcohol (HC 151–I) [http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/151/151i.pdf](http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/151/151i.pdf)
‘without an increase in duty minimum pricing will lead to an increase in the profits of supermarkets and the drinks industry and an increase in marketing, promotions and non-price competition.’

5. Therefore, on the basis of that view, there might inadvertently be an increase in alcohol sales because the effect of increased marketing outweighs the effect of the price increase. In markets where, as acknowledged by the Scottish Government, demand is relatively inelastic (i.e. has a weak response to price increases), this potential consequence cannot be discounted.

6. Fixing minimum prices means that retailers can no longer compete to offer a more competitive price than their rivals. It has the effect of weakening competition between retailers. Over time, this weakened competition means there is less incentive for retailers and manufacturers to reduce their costs. The loss of these dynamic cost savings risks being irreversible in the sense that, even if the minimum price restriction were removed at a future date, costs may still be higher than they might otherwise have been. As noted by the Scottish Government, there is substantial empirical evidence linking price restrictions to higher costs and lower productivity.

7. The raised minimum price threshold could also make it harder for new - small or lower cost - suppliers to enter the market if as a result they were unable to compete with incumbents on price.

8. We also draw attention to paragraph 48 of the Competition Assessment which notes:

‘it is important to ensure that the introduction of a minimum price does not inadvertently allow or encourage competitors to share information on their commercial matters … during the process of setting their price according to the regulations. If this was the case, this could also lead to reduced incentives to compete.’

9. We agree that it is important to take this into account in designing any approach to minimum pricing and in particular to ensure that it does not result in a breach of competition law (for example, as would occur if competitors were to share among themselves information on commercially sensitive matters such as price setting).

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5 First Report of Session 2009-10 on Alcohol (HC 151–I), para 329
6 Competition Assessment, para 29
7 Competition Assessment, para 21
9 For example, as noted in para 35 of the Competition Assessment, the OECD round table in 2005 on resale below cost found that restrictions on selling below cost are associated with slower economic growth and higher unemployment (‘OECD Policy Roundtables, Resale Below Cost, 2005’ http://www.oecd.org/dataoecd/13/30/36162664.pdf). The Competition Assessment also picked up on the experiences of France, following the introduction of the Loi Galland (paras 33 and 49) and of Ireland, in respect of the Groceries Act (para 34).
10 Competition Assessment, para 19
Alternative policy options

10. As the Scottish Government acknowledges, where there are wider policy reasons for wanting to increase the price of a product, the standard policy response is to consider taxation. For example, and although it concerns a different market, fuel tax changes might be used to encourage consumers to buy more energy efficient cars.

11. Taxation, if well designed, should be less distortive of competition than a minimum price because it would apply to all sales and in equal relative measure (for example, on a percentage basis) rather than setting a minimum floor, which would affect only some products (that is, those below the minimum price) and by differing amounts (depending on how far each product is away from the minimum price). Tax revenues also get passed to the government, and in principle could be spent on tackling alcohol misuse in other ways. This is in contrast to a minimum price which may increase revenues for the industry whereas a tax could avoid any adverse incentives to increase sales of alcohol noted in paragraphs 4 and 5 above. We recognise of course that the Scottish Government does not have direct control over rates of duty.

Summary

12. We are grateful to the Committee for seeking our evidence on this matter. It is not within the OFT’s remit to weigh up the competition and market impacts against wider public interest in terms of health and social costs. Ultimately, the fundamental question of whether raising price is likely to be an effective way of tackling alcohol misuse, and whether any advantages of such a policy are outweighed by the negatives, is a matter for policy makers to decide on.

Kyla Brand
OFT Representative in Scotland
Office of Fair Trading
20 January 2010
By email: Healthandsport.committee@scottish.parliament.uk

Dear Mr Imrie

COMMITTEE INQUIRY INTO OUT-OF-HOURS HEALTH CARE PROVISION IN RURAL AREAS

In Ms Christine Grahame MSP, Convener’s letter of 9 February 2010 we were asked to provide clarification of how the sum of £500,000 was derived for Out of Hours cover for Kinloch Rannoch and how this figure relates to the evidence provided by Professor Pollock. We have sought to provide this clarification below.

Note re Costed Proposal for Out of Hours Services in Kinloch Rannoch at c£500k

Since the GPs in the area ‘opted out’ of providing Out of Hours cover, NHS Tayside has reprovided Out of Hours Services. In doing this, NHS Tayside has adhered to both NHS Terms and Conditions of Employment and also European Working Times Directives.

This means, in deriving the cost of any proposed service, NHS Tayside cannot employ one member of staff to cover any more than 40 hours per week, and this has a significant influence on the costed proposal.

Also, NHS Tayside has currently adopted a Lone-Working Policy within the Out Of Hours Service which means that the GP on duty is always accompanied by a driver.

Therefore, the number of hours for which cover was required (when the GP surgery is closed) were identified as 118 per week plus additional daytime cover for Public Holidays. It is then necessary to add 25% to allow for NHS Tayside Leave Policies (annual, study, parental, carer’s, sickness, maternity etc). This is standard practice for any costing exercise for any new development within NHS Tayside.

This identified annual hours of 7,854 and because of Lone Working, this meant the hours were necessary for both GP and driver.

Other factors were then identified, e.g. vehicle, travel, training, course fees, equipment etc, which were then added to the staffing costs.
The costing compiled is attached to this letter as Annex 1, and should you require any further information on the calculations, then the electronic version sent with this letter does contain formulas.

Evidence Provided by Professor Pollock

From 2004 GPs were able to opt out of Out of Hours Services, and in doing so they forfeited 6% of their Global Sum payments. The reference made by Professor Pollock to £6,000 per GP may well be an average for Scotland, but was not the rule as set out in the Statement of financial Entitlement governing the GMS contract.

In 2007/8, the last full year of Kinloch Rannoch practices independent existence, the practice received Global Sum payments of c£80,000, meaning that they forfeited c£5,000 as a result of opting out. This funding was returned to NHS Tayside to assist with the overall provision of the Tayside Out of Hours Service.

In 2008/9 the costs in Tayside of providing the Tayside Out-of Hours Service were c£5,666K. Against this NHS Tayside recovered £1,466K from General Practitioners as a result of them forfeiting 6% of their collective Global sums. This shows that about 26% of NHS Tayside Out of Hours costs were offset by recoveries from General Practitioners.

The significant difference between recoveries and costs of running Out of Hours Services seen at a Tayside level, is magnified in any comparison at a Kinloch Rannoch level, due to the scale of costs set out in Annex 1 and explained above.

With regard to the comparisons made with arrangements within Highland Health Board, I would not wish to comment specifically, however, we have spoken with colleagues in Highland. Our understanding is that a number of GPs in Highland have opted to continue to provide Out of Hours cover at a ‘marginal’ cost over and above their core contract. Some of these GPs are part of the BASICS scheme and do respond to emergencies as tasked by Scottish Ambulance Service, and funded by NHS Highland under a Locally Enhanced Service (LES) Agreement. It is not thought that these arrangements are sustainable as they depend entirely upon the personal choice of the individual practitioner, rather than by design or recruitment.

I trust that the foregoing information is helpful in responding to the points you raise.

Yours sincerely

[Signature]

Professor Tony Wells
Chief Executive

Enc

Copy: Cabinet Secretary for Health & Wellbeing
Inquiry into out-of-hours healthcare provision in rural areas

NHS Dumfries and Galloway – supplementary submission

The increase in calls to Newton Stewart Hospital in-patients and Primary Care Centre calls is simply a reflection of the change and adjustment to the Out of Hours Service arrangements specifically created for the Newton Stewart, Machars and East Wigtownshire (Machars) area.

Following local review and community liaison, as of 1 December 2007 the Out of Hours Service was formalised for the Machars area and agreement reached with the local GPs that a full service would be available for the period 18.00-23.30hrs Monday to Friday and 08.00-23.30hrs Saturday/Sunday and Public Holidays. The duty OOH GP had previously operated on a largely On Call/Home Visit basis. As of 1 December 2007, the duty doctor was based at Newton Stewart Hospital, operating from the Minor Injuries Unit (MIU) there and providing full coverage. This arrangement allowed for better use of the Primary Care Centre facilities and also provided for coverage of any children requiring attention at the MIU. It was also agreed that Scottish Ambulance Service crews could where appropriate, call at the hospital with any Machars patients and have them reviewed there by the duty doctor, with the intention that patient reviewed and perhaps onward patient journeys to Stranraer and Dumfries hospitals avoided or more specifically directed.

The duty doctor being based at the hospital also provided the opportunity for in-patient support where felt necessary.

The service provision was promoted locally and subject to extensive community council input and local media coverage.

The statistics reflect the concentrated use of the service by the Machars based patient population. The in-patient population to the Newton Stewart Hospital did not change, rather there was a more efficient recording on Adastra of the Out of Hours in-patient involvement, such previous activity not necessarily being recorded via the Adastra/OOH systems.

The increase in usage of the Primary Care Centre at Newton Stewart Hospital again reflects the change in service provision and accessibility.

I trust this information is useful and clarifies the raw data provided.

Jeff Ace
Director of Health Services
NHS Dumfries and Galloway
16 February 2010
**Based on NHS Terms & Conditions**

<table>
<thead>
<tr>
<th>Hours Needed per week</th>
<th>Hours</th>
<th>days</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mon-Fri 1800 - 0800</td>
<td>14</td>
<td>5</td>
<td>70</td>
</tr>
<tr>
<td>Sat &amp; Sun</td>
<td>24</td>
<td>2</td>
<td>48</td>
</tr>
<tr>
<td>Weekly OOHs hours</td>
<td>38</td>
<td>7</td>
<td>118</td>
</tr>
<tr>
<td>Annual OOHs hours needed =</td>
<td></td>
<td></td>
<td>6153</td>
</tr>
</tbody>
</table>

**Public Holidays - 10 Daytime hours**

- Total Annual hours needed = 6,283
- 25% Time-out allowance - Annual Leave, Study Leave, NHS Tayside Leave policies (Parental, Carer's, Paternity etc), Sick leave, Maternity leave, all other paid absences

**Total Hours required to provide OOHs cover**

- 7,854

**Conditioned Hours -**

<table>
<thead>
<tr>
<th>GPs</th>
<th>Drivers</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>37.5</td>
</tr>
</tbody>
</table>

**WTE required to cover the above hours -**

- (Total hours/52.143/conditioned hours)

| 3.8 wte | 4.0 |

**These 3.8 wte can be any combination of the following:-**

- Salaried GPs (i.e. on NHS Tayside payroll)
- Sessional GPs (i.e. self contracted GPs opting to cover specified shifts)
- Standby GPs (i.e. self contracted GPs being paid to be available for specified shifts and also being paid when called out to patients - this is only necessary for emergency cover when the GP is already attending another patient)

**Salaried Staff - (Employed under NHS Terms & Conditions)**

<table>
<thead>
<tr>
<th>Tayside OOH GP (2008-09)</th>
<th>Tayside OOH Driver (2008-09)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic salary</td>
<td>£89,915</td>
</tr>
<tr>
<td>Per hour</td>
<td>£43.11</td>
</tr>
<tr>
<td>Total Employer's on-costs being :-</td>
<td></td>
</tr>
<tr>
<td>24%</td>
<td>£14,023</td>
</tr>
<tr>
<td>Employer's superannuation - 14%</td>
<td>14%</td>
</tr>
<tr>
<td>Employer's National Insurance contribution - 10%</td>
<td>10%</td>
</tr>
<tr>
<td>7%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Cost</strong></td>
<td>£338,567</td>
</tr>
<tr>
<td>Basic Hours</td>
<td>£338,567</td>
</tr>
<tr>
<td>On-costs</td>
<td>£81,256</td>
</tr>
<tr>
<td><strong>Total OOHs costs</strong></td>
<td>£419,823</td>
</tr>
</tbody>
</table>

**Sessional GPs (i.e. self contracted GPs opting to cover specified shifts)**

<table>
<thead>
<tr>
<th>When applicable</th>
<th>Type of Shift</th>
<th>Hrs per shift</th>
<th>Cost to NHST per Hour</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday to Friday evenings, until midnight.</td>
<td>WEEKDAY - EVENINGS</td>
<td>6</td>
<td>57.57</td>
<td></td>
</tr>
<tr>
<td>Monday to Sunday, midnight to 08:00.</td>
<td>OVERNIGHT</td>
<td>8</td>
<td>92.11</td>
<td></td>
</tr>
<tr>
<td>Saturday &amp; Sunday, 08:00 to midnight.</td>
<td>WEEKEND - DAYTIME</td>
<td>16</td>
<td>69.08</td>
<td></td>
</tr>
<tr>
<td>Public Holiday, 08:00 to midnight.</td>
<td>PUBLIC HOLIDAY - DAYTIME</td>
<td>16</td>
<td>69.08</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No. of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekday</td>
</tr>
<tr>
<td>253</td>
</tr>
</tbody>
</table>
### Kinloch Rannoch - OOHs - 08/09

#### Annex 1

### Additional costs to provide 24 hour medical cover

Based on NHS Terms & Conditions

<table>
<thead>
<tr>
<th></th>
<th>WEEKDAY - EVENINGS</th>
<th>Overnight</th>
<th>WEEKEND - DAYTIME</th>
<th>PUBLIC HOLIDAY - DAYTIME</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>£87,391</td>
<td>£186,431</td>
<td>£57,475</td>
<td>£11,053</td>
</tr>
<tr>
<td></td>
<td>£87,391</td>
<td>£38,318</td>
<td>£57,475</td>
<td>£114,949</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£38,318</td>
<td></td>
<td>£7,369</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£7,369</td>
<td></td>
<td>£270,435</td>
</tr>
<tr>
<td></td>
<td></td>
<td>£11,053</td>
<td></td>
<td>£110,053</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>£483,828</td>
</tr>
</tbody>
</table>

For this costing exercise an estimate of 50% salaried and 50% sessional has been used.

No provision for additional stand-by costs has been made.

- **Salaried**: 50% - 209,911
- **Sessional**: 50% - 241,914

**Total**: £451,826

### Estimated Costs to provide 24 hour cover in Kinloch Rannoch

#### Note the following costs have NOT been provided for in this costing
- No provision for Medical standby or callouts
- No provision for additional nursing support
- No provision for additional admin support

<table>
<thead>
<tr>
<th></th>
<th>Non Recurring</th>
<th>Recurring costs</th>
<th>Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accommodation</td>
<td>???</td>
<td>???</td>
<td>0</td>
</tr>
<tr>
<td>Medical Staffing</td>
<td>3.8</td>
<td>451,826</td>
<td>451,826</td>
</tr>
<tr>
<td>Drivers</td>
<td>4.0</td>
<td>68,150</td>
<td>68,150</td>
</tr>
<tr>
<td>Training</td>
<td></td>
<td>3,700</td>
<td>3,700</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td>3,700</td>
<td>3,700</td>
</tr>
<tr>
<td>Transport (Lease vehicle)</td>
<td></td>
<td>10,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Paramedical Equipment for vehicle</td>
<td>3500</td>
<td>2,000</td>
<td>5,500</td>
</tr>
<tr>
<td>Travel</td>
<td></td>
<td>14,000</td>
<td>14,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>7.8</td>
<td>3,500</td>
<td><strong>£556,876</strong></td>
</tr>
</tbody>
</table>

Average estimated cost of 3 emergency calls/month therefore = (i.e. Total costs/36) £15,468.77