

Alcohol etc. (Scotland) Bill

Aberdeen City Council

Introduction

The Scottish Parliament's Health and Sport Committee has called for written evidence seeking views from interested parties on the general principles of the above Bill. The evidence received will inform its consideration of the Bill at Stage 1.

The main purposes of the Bill are:-

- 1 Introduce a minimum sales price for a unit of alcohol (s.1&2 of the Bill).
- 2 Introduce a restriction on off sales regarding the supply of alcoholic drinks free of charge or at a reduced price (s.3)
- 3 Make provision in law with respect to the sale of alcohol to under 21s (s. 8).
- 4 Restrict the location of drinks promotions in off sales premises (s.4)
- 5 Introduce a requirement for licence holders to operate an age verification policy (s. 5).
- 6 Make provision in law for a social responsibility levy on licence holders (s.10 & 11).

The details of the consultation were received after the Licensing Board's meeting of 15 December and, with Christmas intervening, there has not been time to arrange another meeting to discuss the Licensing Board's response to the Bill with the Elected Members. The Board does not meet again until 9 February, after the consultation period has finished. As the Bill contains a number of proposals which are politically controversial this is regrettable.

This response is also given from the perspective of the Board as an autonomous body from the Council and as a quasi judicial body.

The main questions raised in the consultation are as follows:-

Q1 - The advantages and disadvantages of establishing a minimum alcohol sales price based on a unit of alcohol

This is a difficult question to answer as it is political in nature. There is also a question over the legality of the proposal under European competition law. That aside, is there documented evidence that raising the price of a product such as alcohol actually reduces its consumption? The nearest obvious example is smoking and anecdotally, increasing the price of cigarettes did not apparently reduce consumption markedly. Other measures were required eg the ban on smoking in public places, before there was a demonstrable effect on public health.

Advantages : Those bodies which represent the health interest are the most suited to respond to this question. Several articles have been written outlining

the advantages of minimum pricing. The idea behind a minimum price scheme is to ensure that the price of the cheapest alcohol, which significantly contributes to health risk, is raised to a level which discourages purchase and consequent abuse. If this route is chosen the price will have to be set at a high enough rate to ensure that it does have an effect.

Disadvantages: these appear to be voiced by those who consider that a free market should decide what the price of any commodity should be without any imposition from the state. There is also the legal question of the legality of price fixing to be resolved.

It is important that, should the Government impose minimum prices, the method by which the price is set must be clear and unambiguous and there should be no ambiguity as to when the minimum price should be applied. Currently there is confusion surrounding the mandatory conditions on premises licences concerning irresponsible promotions and we would not wish to see this repeated. Clear drafting of the provisions is essential. Moreover, provision should be made to facilitate updating the minimum price whenever that is necessary. It is suggested that a system of regular monitoring should be introduced to calculate the effects of the provision. It may be of assistance in monitoring if it was compulsory for a licensee to display his/her price tariff prominently on the premises. This would also be useful in monitoring to ensure that the price of alcohol was consistent over the 72 hour period required in the mandatory conditions on irresponsible promotions. (Paragraph 7 Sched 3 Licensing (Scotland) Act 2005)

Q2 - The level at which such a proposed minimum price should be set and the justification for that level

Again, information from health interest groups is most appropriate here. The price should be set at a level sufficiently high to achieve its aim. We are not in a position to suggest what level that might be.

Q4 - The rationale behind the use of minimum pricing as an effective tool to address all types of problem drinking

Again, information from health interest groups is most appropriate here. Experience of trying to overturn public opinion in any matter does suggest however that a package of measures works better than one measure operating alone.

Q5 - 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.

Raising the age nationally from 18 would be one way to address these issues. Given that it is accepted that many of the problems associated with alcohol misuse occur around anti-social behaviour on weekend nights and that many of these people “frontload” at home by drinking at home before going out because it is cheaper, it would seem sensible to include off sale licensed

premises in control measures. Also a lot of under 18s obtain their alcohol from small local off licensed premises then cause problems in their local communities and it would make sense to price alcohol out of their financial reach.

Q6 - The advantages and disadvantages of introducing a social responsibility levy on pubs and clubs in Scotland

The money raised is intended to reimburse local authorities for the costs of dealing with the adverse effects of alcohol misuse. Those who profit from the sale of alcohol are expected to fund this reimbursement. The examples given are extra policing or street cleaning or furthering the licensing objectives.

This proposal gives rise to more questions than answers:

1) What criteria should be used to determine the types of premises (or specific premises) which would be subject to the levy? Are there any types of premises which may be excepted from the general rule? What about those premises that are well managed and uncontroversial in their operation? Are they expected to contribute to the levy?

2) How is the levy to be determined? A sliding scale based on rateable value? An assessment of the amount of antisocial behaviour emanating from a particular premises? Right across the Licensing Board area or in parts only? How will premises which are not included be brought within the ambit of the levy if they become problematical?

3) Is the calculation of the levy to apply equally to liquor licence holders and civic government licence holders (late hours catering, public entertainment and street traders licences). How is it justified bringing these latter licence types into this legislation? These latter licences are not subject to the licensing objectives so why are they being subjected to a levy in furtherance of the objectives? Whilst we would agree that late night catering licence holders operate during the period of the night time economy, street traders do not. Most public entertainment licence holders operating at night also have alcohol licences. Are they to be subject to a double levy for the 2 licences?

The Committee describes the premises which are to be subject to the levy as "pubs and clubs". However, the Licensing (Scotland) Act 2005 and the Bill do not distinguish types of premises. The Bill defines relevant licence holders as "holders of premises licences or occasional licences granted under the 2005 Act". This therefore will include all different types of operation ranging from large noisy nightclubs open late to small specialist fine wine selling delicatessens which close no later than 22.00. Should this levy be imposed on everyone who holds a premises licence? If not, the law must be clear on who must pay this levy and why. What is to be covered by "social responsibility"? Anti social behaviour by customers of liquor licensed premises? How are we to distinguish which premises have generated the anti social behaviour? Some behaviours and the reasons for them may be perceived as more anti social and/or serious than others, eg sales of alcohol to people who are obviously inebriated or glass assaults and should be the subject of more

intensive enforcement action. Will they attract a larger levy?

A condition banning the sale of alcohol in glass receptacles or allowing people to drink from the bottle would cut a big percentage of glass assaults at a stroke and be a huge benefit (ie compulsory use of plastic glasses).

It is a concern that there is no mention of individual responsibility in the Bill. Some of the polluters are the people who get drunk and act irresponsibly. How are they to contribute to the levy?

Advantages: Money is made available from premises licence holders to local authorities to assist in dealing with the effects of alcohol-fuelled anti social behaviour such as littering. This measure will no doubt be welcomed by Local Authorities in contributing to the cost of clearing litter and other detritus caused by late night revellers. Licence holders may be more vigilant in ensuring that their customers do not become intoxicated. Are the police and health services included in qualifying for a share of the levy? The definition of "Local Authority" in the Bill may need to be expanded.

Disadvantages: It is noted that the Scottish Government is holding discussions with stakeholders in order to develop further the detail of the levy, including the parameters of the arrangements. This is important as it is difficult to envisage how a levy can be set to be fair to all concerned given the complexity of apportioning responsibility for anti social behaviour problems to specific licence holders. The other suggested approach "polluter pays" where only those licensees breaching the 2005 Act pay, may not adequately achieve the intended goal due to the time and cost factors in gathering evidence, holding hearings and determining blame. Who is to take on this responsibility? What appeal provisions have been built into the Bill for those who wish to appeal.

Whichever approach is finally decided, it is essential that the system can be administered easily. The levy is to be paid to the Local Authority but what is the levy to pay for and who gets the money? Who sets the figure? If it is up to the Local Authorities to fix the figure this will introduce a layer of bureaucracy and it will therefore be necessary to provide clear guidelines to achieve consistency across Scotland.

If there are to be exemptions from payment those categories must be clear. Is there a standard figure or are there different levies depending on the different types of premises? The imposition of a standard national levy is easiest to administer but does not take into account the differences in licensing board areas around the country.

A levy on top of all the other expenses a licence holder may face may well have a serious effect on some businesses especially the smaller ones. Premises licence holders already pay an annual fee to Licensing authorities and this levy will be in addition to that. If a levy is to be imposed the reasons for doing so must be clear and unambiguous. The levy must also be justified and fair among all liquor licence holders.

What measures will be introduced to ensure a burden is not imposed on local authorities collecting the levy on behalf of other agencies eg police, health services.

Q7 - The justification for empowering licensing boards to raise the legal alcohol purchase age in their area to 21.

It is quite simply not practical or desirable to have differing ages at which it is legal to buy alcohol in different areas of a small country like Scotland. It is for the government to set the age and for local areas to enforce it. There should be no distinction between on and off sales premises.

This provision also requires Boards to include a “detrimental impact statement” within their licensing policy statements regarding the effect of off sales to those under 21 and whether this is having a detrimental effect on one or more of the licensing objectives in the whole or part of the Licensing Board’s area. This will rely heavily on the police collecting evidence from test purchasing schemes. Again this can be addressed largely by including off licensed premises in the other control measures.

Should licensing boards be given this power, it would be helpful if clear guidelines were provided as to the criteria boards should consider to assist them in a) deciding if an area justifies this status and b) formulating their “detrimental impact statement”. If the provision is ratified it may be more flexible to give licensing boards the option to have a detrimental impact statement rather than make it compulsory.

Also it will be far too confusing and unworkable to have part of a Board area with a “21 policy” therefore this provision, if adopted should apply to the whole Board area. In essence we already have such a “policy” as the law as it stands is age 18 and there is evidence that it is not adhered to or enforced so it is not clear why raising the age to 21 will fare any better. If the main problem is underage drinking this can be addressed by other means as stated above and by applying more rigorous enforcement.

The provision in the Bill in respect of the requirement for licence holders having an age verification policy should be a significant step in preventing problems provided of course it is correctly followed by licensees.

Importantly, this should involve a more active approach by Procurators Fiscal when considering cases brought to them by the police. Too often the PF does not take action on the statutory offences in the current legislation. We repeat this should be a national requirement rather than a local one.

Q8 - The role of promotional offers and promotional material in encouraging people to purchase more alcohol than they intended

Section 3(2) of the Bill has the effect that “quantity discount” and similar promotions would not be permitted for off sales. This measure is to be

welcomed as it assists in levelling out the approach to irresponsible alcohol promotions between on and off sales premises. Promotions can take many forms. The Act deals with certain known promotions. In trying to be specific, the way is open for promoters to seek alternative ways to promote alcohol sales which may be irresponsible in practice but which are not covered by the legislation. "Grey areas" should be avoided. It is suggested that the legislation should provide a "catch all" provision to meet the development of irresponsible promotions. If the wording of the Act is unclear Licensing Boards may interpret the provisions differently leading to a lack of uniformity throughout the country.

Q9 - Any other aspects of the Bill

Section 4 - Off sales : location of drinks promotions

This proposal is to be welcomed.

Section 9 Premises licences : variation of conditions.

This proposal is welcomed and will be potentially useful.

FINANCIAL IMPACT

The 3 proposals identified by the Scottish Government as having a significant financial effect (ie £0.4m pa once implemented) are

- a) introduction of minimum price for a unit of alcohol;
- b) introduction of a restriction for off sales on supply of alcoholic drinks free of charge or at a reduced price;
- c) provision in respect of sale of alcohol to under 21s.

The financial impact will fall mainly on the government through loss of VAT revenue.

If adopted, these significant proposals will add considerably to the workload of the Licensing Standards Officer however, the Scottish Government has considered that the additional work is small and therefore costs are likely to be marginal. This is confirmed by COSLA and the position will be reviewed around a year after implementation. We would disagree with this. In particular if a 21 policy is implemented in part of a Board's area monitoring will be a big task as is the whole irresponsible promotions issue.

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