

ALCOHOL (LICENSING, PUBLIC HEALTH AND CRIMINAL JUSTICE) (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill (“the Bill”), introduced to the Scottish Parliament on 1 April 2015. It has been prepared by the Non-Government Bills Unit (NGBU) on behalf of Richard Simpson MSP, the member who introduced the Bill, in accordance with Rule 9.3.3A of the Parliament’s Standing Orders. The contents are entirely the responsibility of the member and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 65–EN.

POLICY OBJECTIVES OF THE BILL

2. The Bill aims overall to promote public health and reduce alcohol-related offending. It contains measures that:

- place restrictions on the retailing and advertising of alcoholic drinks;
- make changes to licensing laws;
- place obligations on the Scottish Ministers to publish, review and report on its alcohol education policy; and
- direct certain people whose offending or antisocial behaviour is attributable to alcohol consumption towards treatment or restrictions on that consumption.

BACKGROUND

3. Scotland has a particularly difficult relationship with alcohol. Steps taken in the past ten years appear to have arrested the sharp increase in consumption since the 1970s. However, figures suggest that alcohol consumption per head in Scotland is amongst the highest in the world – 23% higher than in England and Wales, despite similar pricing and availability.¹ The effects of this level of consumption are felt in a wide range of sectors, including the NHS, the criminal justice system, communities at large, employment, and the wider Scottish economy.

¹ NHS Scotland. (2011) *Monitoring and Evaluating Scotland’s Alcohol Strategy: An update of alcohol sales and price band analyses*, page 18. Available at: <http://www.healthscotland.com/uploads/documents/16795-completeReportMESASAugust2011.pdf>

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4. It is not just the level of consumption but the patterns of consumption which are harmful. “Binge drinking” is for many an accepted norm, not just on nights out which can all too often end up in disorder, injury or arrest, but also by people after work or at home as part of their everyday lives. Too many are unaware that they are drinking in excess of recommended limits.

5. The member lodged his draft proposal for a Bill to prevent and tackle various aspects of alcohol misuse on 13 March 2012. This was accompanied by the consultation document, *Shifting the Culture*.² The consultation closed on 31 July 2012 and a summary³ of the responses⁴ received was prepared by the Non-Government Bills Unit. A final proposal was lodged on 2 May 2014 and received the cross-party support needed to secure the right to introduce a member’s bill.

6. The final proposal was for:

“a bill to promote public health and reduce alcohol-related offending through (a) restrictions on the retailing and advertising of alcoholic drinks; (b) changes to licensing laws; (c) obligations on Scottish Ministers to issue guidance and report on its alcohol education policy; (d) directing offenders towards treatment or restricting their alcohol consumption.”

DETAIL OF THE BILL

7. The policy objectives, background, alternatives to, and details of the member’s consultation on each of the measures contained in the Bill are set out under the following headings:

- Minimum price of packages containing more than one alcoholic product (section 1);
- Alcoholic drinks containing caffeine (section 2);
- Age discrimination: off-sales (section 3);
- Container marking: off-sales (section 4);
- Applications for, or to vary, premises licence: consultation and publicity (section 5);
- Restrictions on advertising of alcohol (sections 6-13);
- Alcohol education policy statements (section 14);
- Drinking banning orders (sections 15-29);
- Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty (section 30);
- Offences involving alcohol: notification of offender’s GP (section 31).

² The consultation document is available at:

http://www.scottish.parliament.uk/S4_MembersBills/20120313_Shifting_the_Culture_Alcohol_Bill_Consultation_Final_version.pdf

³ The summary of consultation responses is available at:

http://www.scottish.parliament.uk/S4_MembersBills/Summary_of_Consultation_Responses.pdf

⁴ The responses to the member’s consultation are available at:

<http://richardsimpson.info/consultation-responses-2/>

PART 1 – LICENSING AND PUBLIC HEALTH

8. The provisions of Part 1 of the Bill set out a number of measures which deal with licensing and public health issues.

Minimum price of packages containing more than one alcoholic product (section 1)

Policy objectives

9. The purpose of section 1 is to prevent licensed premises selling discounted multi-packs of alcohol when a single can, bottle or other container of the same alcohol product is not sold in the same retail outlet. It does this by adding a new mandatory condition that is to apply to any premises licence or occasional licence. (A premises licence is the type of licence that pubs, cafes, restaurants and shops must normally have if they are to sell alcohol either for consumption on or off the premises. An occasional licence is an alternative type of licence, valid for up to 14 days, that authorises the sale of alcohol on a one-off or short-term basis.)

Background

10. Section 2 of the Alcohol etc. (Scotland) Act 2010 (“the 2010 Act”) sought to prevent an alcohol product being offered for sale at a lower unit price when purchased in larger quantities. The principle behind this provision, which received cross-party support, was that no-one should be encouraged by quantity discounting of alcohol products to buy more alcohol than they otherwise intended. However, the provisions in the 2010 Act only apply when a single item of an alcoholic product is on sale in the licensed premises. For example, if a retailer does not sell single cans of a particular beer, then it is not required to sell an eight-pack of that beer for at least double the price of a four-pack of the same beer.

11. The Bill closes this “loophole” in the legislation and ensures that there cannot be a lower price per item for larger multi-packs than for smaller multi-packs of the same alcoholic product, regardless of whether single units of the product are also sold.

12. These provisions prevent discounting of larger multi-packs only where they contain the same alcoholic products – i.e. the same drinks, in the same containers. For example, a case of 12 bottles of wine (two each of six varieties) could not be sold for less than twice the price of a half-case of the same selection (one each of the same six varieties). But they would not prevent (for example) the same wine being sold in a three-litre box at less than four times the price of a single 75cl bottle, as the wine-box and the bottle would count as separate “alcoholic products”. These provisions would also not apply to packages in which alcohol products are sold together with non-alcoholic products (for example, a gift-box containing a bottle of wine and a decanter, or a hamper also including food items).

Alternative approaches

No legislative action

13. It was considered whether the alcohol industry could self-regulate to implement a voluntary ban on the sort of quantity discounting still permitted under the 2010 Act. However,

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given the competitive nature of the licensed trade, in terms of both on-sales and off-sales, it was considered that it was unlikely that such an agreement would be reached and implemented effectively. Moreover, given that the Bill seeks to address a “loophole” in existing legislation, it was considered that this approach was a proportionate and effective means of building upon existing legislation to reduce quantity discounting of alcohol.

More comprehensive ban on quantity discounting

14. The member also considered a more comprehensive ban on quantity discounting, but took into account the practical difficulties of, for example, establishing that the wine sold in a wine-box and a bottle are the “same” wine, and the complexities of departing from the 2010 Act definition of “alcoholic product” (as a product containing alcohol which includes the container in which alcohol is for sale). Some quantity discounting is also very unlikely to lead people to buy larger quantities of alcohol – for example, people generally buy wine-boxes in order to be able to drink wine in smaller rather than larger quantities.

Consultation

15. Just over two-thirds of respondents on this aspect of the Bill supported the measure. A range of reasons were provided, including that the measure was a natural progression from the quantity discount ban introduced by the 2010 Act, was likely to be an effective means of tackling multi-pack discounting, and would have low implementation costs.

16. Arguments against the measure included that retail outlets might be encouraged to sell alcohol products only in larger multi-packs to increase sales, thereby limiting consumer choice and potentially encouraging higher alcohol use. Other reasons for opposition were that licensing legislation was already complex for small, local business and that this measure would add to that complexity and that the implementation of the minimum unit price for alcohol legislation would have an equivalent effect in relation to lower-priced drinks.

Alcoholic drinks containing caffeine (section 2)

Policy objectives

17. Section 2 prohibits the sale to consumers of pre-packaged alcoholic drinks with a caffeine content in excess of a limit to be determined by the Scottish Ministers in regulations. The prohibition is in the form of a new mandatory condition on premises licences and occasional licences (covering, in each case, both on-sales and off-sales). The condition will also apply to drinks or drinks ingredients which are sold unmixed in a package which comprises a single product for a single price and which, when combined, would produce an alcoholic drink with a caffeine content greater than the level determined by Scottish Ministers.

18. It will be for Ministers to decide, on the basis of the evidence available at the time, what the maximum caffeine limit should be. The member’s initial proposal was for a limit of 150mg per litre, partly because this is the limit already applied in Denmark (an EU state) and Iceland (part of the European Free Trade Area and subject to similar rules on the free movement of goods). However, Ministers may wish to consider other options based on evidence and designed

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to address problem drinking in Scotland which is associated with caffeinated drinks. The limit could also be varied over time as new evidence emerges.

19. The Scottish Ministers must specify the (initial) caffeine limit within 12 months of Royal Assent (which is also the timescale within which the prohibition must come into force). The new conditions will apply automatically to all new and existing licences, from that date.

20. The Licensing (Scotland) Act 2005 (“the 2005 Act”) defines “alcohol” for the purposes of that Act and excludes any drink with an alcohol content of 0.5% or less at the time of sale. The effect of this provision, therefore, is that drinks containing caffeine which have an alcohol content lower than 0.5% are not affected by the ban.

Background

21. There have been a number of academic studies examining the effects of consuming alcohol in conjunction with caffeine. These have highlighted concerns about a decreased awareness of the level of intoxication being experienced, leading to greater risk-taking behaviour (so-called “wired awake drunk”). They have also suggested that consuming a stimulant (caffeine) on top of a depressant (alcohol) allows drinking to continue for longer, which could be expected to lead to higher consumption and greater risk of harm.⁵

22. More concrete and specifically Scottish work on prison population and offending may place some of these concerns into context. A study for the Scottish Prison Service found that 43.4% of those who admitted drinking prior to committing their current offence had consumed a well-known brand of tonic wine, despite this drink accounting for less than 1% of total alcohol sales nationally.⁶ A BBC Scotland investigation⁷ found that the same beverage was mentioned in 5,638 crime reports in Strathclyde from 2006-2009, equating to three per day on average. This drink combines a high alcohol content (15%) with a very high level of caffeine (375 mg per litre).

23. Within the EU, Denmark has effectively legislated to limit the caffeine content of pre-packaged alcoholic drinks to 150 mg of caffeine per litre by requiring that such drinks can only be placed on the market provided they are notified to the Danish Veterinary and Food Administration and provided an acceptance is granted.⁸

⁵ The Journal of the American Board of Family Medicine, Thombs DL et al (2009) 23 (4): 55-558, *Event-level analyses of energy drink consumption and alcohol intoxication in bar patrons*.

Weldy DL (2010) *Risks of Alcoholic energy Drinks for Youth*.

Society for Academic Emergency Medicine O'Brien MC et al. *Caffeinated cocktails: energy drink consumption, high-risk drinking, and alcohol-related consequences among College Students*., 15(5):453-60.

The Department of Clinical and Experimental Medicine, Orteri et al (2007) *Intake of Energy Drinks in Association With Alcoholic Beverages in a Cohort of Students of the School of Medicine of the University of Messina*., *Alcoholism: Clinical and Experimental Research* Vol. 31, No 10.

⁶ McKinlay Report for the Scottish Prison Service, McKinlay et al. (2009) *Alcohol and Violence among Young Male Offenders In Scotland 1979-2009*.

⁷ BBC Scotland. *Buckfast 'in 5,000 crime reports'*. January 2010. Available at:

<http://news.bbc.co.uk/1/hi/scotland/8464359.stm>

⁸ Scottish Parliament Information Centre. December 2014.

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24. In the USA, the Food and Drug Administration appears to have achieved a similar result in practice by warning four companies that the caffeine added to their alcoholic beverages was an “unsafe food additive” and that further action, including seizure of their products, was possible under federal law.⁹

25. Canada permits pre-packaged alcoholic drinks containing caffeine from a natural source (such as guarana), but prohibits such drinks where they contain synthesised caffeine. One pragmatic benefit of this approach may be that it avoids banning drinks such as coffee liqueurs (which tend to be drunk in small quantities).¹⁰

Alternative approaches

26. An alternative approach might be to ban the sale of alcoholic drinks containing any level of caffeine but the evidence on problematic drinking strongly suggests that it is drinks with a high level of both caffeine and alcohol that create problems. Consideration was given to placing a limit of 150mg per litre, since there is a precedent for this in other jurisdictions and such a level would have allowed the sale of coffee liqueurs and so on – drinks which do not appear to be associated with problem behaviour – to continue. A limit of 150mg per litre was proposed in the member’s consultation and some of those responding felt that more evidence of harm was required to justify this. The member wishes a debate to take place, during the passage of the legislation, on what constitutes a safe level of caffeine in alcoholic drinks, a debate which would inform the final decision by the Scottish Ministers when they produce regulations on the permitted limit.

27. Consideration was also given to the alcohol threshold that would trigger the ban and whether it should include all drinks containing alcohol, regardless of the strength. Since drinks containing a low level of alcohol are not likely to present a problem, and for clarity of implementation, it was decided to limit the ban to alcoholic drinks covered by the 2005 Act (ie drinks with an alcohol content of at least 0.5%).

28. The member also reflected on whether the licence condition should be mandatory (ie apply automatically to every licensed premises in Scotland) or whether it should be a discretionary power available to Licensing Boards, should they choose to adopt it, on a case by case basis. While a discretionary power would allow action to be focussed in areas where the problem of anti-social drinking associated with caffeinated alcoholic drinks is greatest, it would not be likely to drive the re-formulation of certain products as it would allow “problem drinkers” to travel, perhaps a short distance, to buy caffeinated alcoholic drinks and, finally, might never come into force if Licensing Boards decide not to use the power. For these reasons, the member decided to create a mandatory condition for all licences.

⁹ United States Food and Drug Administration. (November 2010) Available at: <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm234109.htm>.

¹⁰ Health Canada. *Questions and Answers: Caffeinated energy drinks*, Paragraph 17. Available at: <http://www.hc-sc.gc.ca/fn-an/prodnatur/questions-caf-eng.php#a17>.

Consultation

29. Consultees who supported the proposal made reference to the studies which made a link between caffeinated alcohol and anti-social behaviour, risk-taking behaviour and violent crime, although many accepted that more evidence is required to establish that pre-mixed drinks are the root cause of violence and anti-social behaviour, pointing out that cultural attitudes towards violence and drinking are also at play. It was noted by some that Scotland's problems appeared to be associated with one brand in particular.

30. Some of those responding to the consultation felt that a focus on caffeinated drinks was an unhelpful distraction from the harm that is caused by alcohol in all forms and noted that the measure would not prevent people from mixing their own caffeinated alcoholic drinks. They pointed out that pre-mixed caffeinated drinks have a very small market share and it would be difficult to prevent the outlawed formulations from being imported through online sales or in areas close to the border.

Age discrimination: off-sales (section 3)

Policy objectives

31. Section 3 prevents the Scottish Ministers or Licensing Boards imposing, via licence conditions, any age-related restrictions on the sale of alcohol for consumption off the premises. The prohibition will not restrict the ability of individual businesses to operate age-related policies on a voluntary basis, so long as those policies are compatible with other aspects of existing law.

Background

32. Excessive consumption of alcohol is not restricted to any particular age group or social category, yet it is possible, under current legislation, for a Licensing Board to impose (either on its own initiative, or because it is required by Ministers to do so) an age-related condition on individual premises licences which would prevent those aged 18-20 from purchasing alcohol for consumption off the premises. Boards are prevented from including an intention to impose such measures in a licensing policy statement or supplementary statement¹¹ as a result of section 9 of the 2010 Act but this does not prevent a Licensing Board from imposing an age-related condition in an individual premises or occasional licence.

33. The member views this as unhelpfully reinforcing stereotypes around youth and "binge drinking" and wishes also to protect young adults from unwarranted interference in their rights. In relation to (illegal) alcohol sales to under-18s, there are already ways to address this, through methods such as "Challenge 25", test purchasing by minors, licence revocations and use of the criminal law. But young people in the 18-20 age bracket are legally entitled to purchase alcohol, and the member believes that the law should treat them as responsible adults who have the right to make individual choices, rather than having their ability to exercise that right restricted on the basis of over-indulgence by a minority of their peers.

¹¹ Licensing (Scotland) Act 2005 (asp 16). Available at: <http://www.legislation.gov.uk/asp/2005/16/contents>

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Alternative approaches

34. There is no workable alternative that would meet the aim of removing the ability of Licensing Boards to impose age discrimination through licence conditions.

Consultation

35. A number of respondents to the member's consultation supported the proposal on the grounds that appropriate measures to tackle under-age drinking include consistently strict enforcement of the age of purchase of 18 years with a requirement for proof of age and streamlining the prosecution of offenders. The Church of Scotland argued that "individual and collective responsibility for our alcohol consumption are essential to tackle the issues we face, therefore it is important that people aged 18-21 retain the right to be treated as responsible adults on an equal basis with other adults".¹²

36. Others opposed the proposal, arguing that patterns of behaviour were variable and providing local Licensing Boards with flexibility in imposing controls to meet local circumstances was appropriate. Consultees argued that a Board might be justified in imposing a restriction on the sale of alcohol to certain age groups or during certain times if premises were found to be selling alcohol to under-age persons on a regular basis or if there were problems of violence and disorder in public spaces.

Container marking: off-sales (section 4)

Policy objectives

37. Alcohol container marking is a scheme aimed at addressing under-age drinking and associated anti-social behaviour. While the problems associated with high consumption of alcohol affect all age groups, there are specific problems in areas of Scotland with under-age drinking and this contributes to anti-social behaviour and criminal activity as well as having implications for the health of the young people concerned. Results of successive Scottish Schools Adolescent Lifestyle and Substance Use Surveys (SALSUS)¹³ indicate that the number of cases in which friends/relatives were a source of alcohol for 13- and 15-year-old pupils rose steadily between 1998 and 2013. In 2013, the percentage of 13-year-olds who stated that relatives were their main source of alcohol was 38%, whilst the percentage of 15-year-olds stating that friends were their main source was 46%.¹⁴

38. Section 27A of the 2005 Act enables Licensing Boards to vary premises licence conditions, but only in relation to matters prescribed by the Scottish Ministers in regulations. To date, the Scottish Ministers have not prescribed any such matters and, as a result, there is currently no mechanism for Licensing Boards to vary premises licences to require participation in container marking schemes.

¹² The Church of Scotland. Response to the member's consultation.

¹³ ISD Scotland. *Scottish Schools Adolescent Lifestyle and Substance Use Surveys (SALSUS)*. Available at: <http://www.isdscotland.org/Health-Topics/Public-Health/SALSUS/>

¹⁴ ISD Scotland. (2014) *SALSUS survey 2013*, page 22. Available at: http://www.isdscotland.org/Health-Topics/Public-Health/Publications/2014-11-25/SALSUS_2013_Alcohol_Report.pdf

39. The purpose of section 4 is to enable Licensing Boards to impose container marking schemes as an additional tool in tackling under-age drinking, without the need for the Scottish Ministers to make this possible under section 27A of the 2005 Act. New section 27B enables Licensing Boards, at the request of the police, to vary the conditions of a licence to sell alcohol from off-sales premises to include a requirement to participate in a container marking scheme. The scheme involves marking all or selected alcohol containers sold on the premises (for example, with a sticker, or using a pen whose marks only show up under UV light) in a distinctive way. Then, in the event of the alcohol being confiscated from a minor, or found in a place where under-age drinkers are known to congregate, the mark can be read and the source premises identified.

40. The scheme aims to strengthen police and local authority efforts to prevent alcohol being sold illegally to minors or to adults proxy purchasing for minors. The intention is to supplement the existing technique of test purchasing, where minors are sent into off-sales premises to see whether the staff are prepared to sell them alcohol illegally. The success of test purchasing is limited because it may be that staff know the children who regularly buy alcohol from them, so may be suspicious when an unknown child tries to do so and will challenge their age. The member's intention is for a container marking scheme to be requested where the police have intelligence that retailers are selling to under-age drinkers or to those who buy alcohol for minors, and will prove a more effective way of gathering relevant evidence.

Background

Examples of schemes

41. Dundee City Council and Tayside Police ran a voluntary "bottle-marking" scheme in 2011 in Dundee. This included the co-operation of the majority of off-sales premises, and involved licensees using an ultraviolet pen to mark alcoholic products with a code specific to their premises. Tayside police officers and community wardens were issued with UV key fobs to enable them to read the codes on any bottles confiscated from young people, to allow the bottles to be traced back to the store where the alcohol was bought.

42. In Newcastle, "Alcoholwatch" is an initiative which focuses on the suppliers of alcohol and is intended to address alcohol-related disorder in a particular locality and, as in the Dundee example, is a tool to address alcohol-related youth disorder and targeted at those suppliers who sell alcohol to under-18s or those buying on behalf of under-18s. The scheme consists of numbered "Alcoholwatch" stickers which are applied by the retailer to each bottle so that they can be traced back to the shop that sold them.

Alternative approaches

43. As indicated, the Scottish Ministers already have powers (under section 27A of the 2005 Act) to issue regulations that would allow Licensing Boards to require participation in alcohol container marking schemes as a condition of the licence. However, Ministers have not so far used this power to make regulations.

44. The member is aware that container marking schemes could be further piloted and rolled out throughout Scotland on the same voluntary basis as the one in Dundee and that this would

not require further legislation. However, he believes that, to be effective, Licensing Boards need to be able to vary conditions of licences so as to make participation in such schemes compulsory.

Consultation

45. In his consultation on the measure proposed in the Bill, the member sought views on whether there was sufficient evidence to justify legislation allowing Licensing Boards to make participation in a container marking scheme a licence condition, or whether voluntary arrangements were adequate.

46. Many of the responses supported the concept of container marking in principle, so did not directly answer the question as to whether there was “sufficient evidence” to justify legislation.

47. Generally supportive comments included that options which empowered Boards to use local intelligence and take evidence-based responses to their areas’ problems were welcomed; that it was another control that Licensing Boards could apply to assist with prevention and enforcement; and that it provided retailers with the opportunity to contribute to prevention and enforcement.

48. Those who did not support the introduction of such schemes cited the lack of evidence to support such schemes, the cost of implementation and the burden it would place on retailers and the police.

Applications for, or to vary, premises licence: consultation and publicity (section 5)

Policy objectives

49. Section 5 aims to enhance local people’s ability to influence alcohol licensing decisions. In particular, it strengthens the consultation arrangements in relation to applications for a premises licence or a variation to such a licence (except for “minor variations”).

50. At present, Licensing Boards must consult people who occupy land immediately adjacent to the premises in question (ie within four metres) and (separately) any community council whose area includes those premises. Community councils can be a useful means of allowing the views of local people to be conveyed to a Licensing Board, but not every local area has a community council, and some such councils are not active. Accordingly, the Bill provides that, in a situation where there is no community council in the relevant area, or where any such council is inactive, the Board must consult local residents within a much larger area (up to 50 metres from the relevant premises). The Bill also extends the periods for which notices about the applications must be displayed, and within which representations or objections may be made, in both cases from 21 days to 42 days. This is partly to ensure that, where there is an active community council, the Board has time to consult locally before reaching its own considered view and it also to give interested parties who are away from home (on holiday, for example) more opportunity to respond.

Background

51. Communities can be affected by licensed premises in a variety of ways, ranging from noise and disruption to concerns regarding community safety as a result of alcohol-related violence. Survey evidence suggests that the public perceive alcohol abuse to be a social problem in Scotland. For example, the 2010-11 Scottish Crime and Justice Survey (SCJS) found that 97% of respondents considered alcohol abuse in Scotland to be a “problem” whilst 74% of respondents considered it to be “a big problem”.¹⁵ According to the responses to the Scottish Household Survey, in 2009/10, 4% of the Scottish population considered alcohol abuse as an aspect of their neighbourhood they particularly disliked¹⁶.

52. At present in Scotland, when a Licensing Board receives an application for a new premises licence, or for a variation to a premises licence (except for “minor variations”), the Licensing Board is required to notify, amongst others, any community council within whose area the premises are located and each person having a “notifiable interest” in “neighbouring land”¹⁷ – which is defined as land within four metres of the premises in question.

53. By contrast, in New Zealand, licence holders are required to renew their licence no more than a year after their licence is first granted and every three years thereafter, each time giving notice in two newspapers and by means of a visible sign on or near the premises, and giving residents who might be affected more than the public generally the opportunity to object. In England and Wales, any individual or business can make representations or comment regarding an application for a premises licence or regarding a variation or review of a premises licence.

54. A Scottish Government survey¹⁸ of community councils found that, of the 1,370 community councils in Scotland, 84% were considered to be “active”.¹⁹ Community councils which were “inactive” were more likely to be located within deprived²⁰ areas. Figures published by the BBC in 2011²¹ indicated that 80% of community councils were active. Both surveys would appear to suggest that a substantial proportion of community councils are not actively operational.

Consultation of local people where there is no active community council

55. The Bill provides that existing provisions in relation to consultation on applications for new premises licences and applications for a variation to a premises licence (except for “minor

¹⁵ Scottish Government. (2011) *Scottish Crime and Justice Survey (SCJS)*. Available at: <http://wayback.archive-it.org/3011/20130201171827/http://www.scotland.gov.uk/Publications/2011/10/28142346/0#>

¹⁶ Scottish Public Health Observatory. (2014) *Alcohol – social harm*. Available at: <http://www.scotpho.org.uk/behaviour/alcohol/data/social-harm>

¹⁷ The terms “notifiable interest” and “neighbouring land” are defined in SSI 2007/453. Available at: http://www.legislation.gov.uk/ssi/2007/453/pdfs/ssi_20070453_en.pdf

¹⁸ Scottish Government. (2013) *Survey of Local Authority Community Councils*. Available at: <http://www.scotland.gov.uk/Publications/2013/12/4654>

¹⁹ The Scottish Government. (2013) *Survey of Local Authority Community Councils*. Page 2. Available at: <http://www.gov.scot/Resource/0044/00440438.pdf>

²⁰ Deprived area is defined within the 2013 Scottish Government survey as being within the 15% most deprived datazones in Scotland.

²¹ BBC. (2011) *Community Councils in your area*. Available at: <http://www.bbc.co.uk/news/uk-scotland-15540699>

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variation” applications) are strengthened. For applications of this kind, where no community council exists, or the Licensing Board believes that the community council within the area where the premises is located is not active, the Licensing Board should consult directly everyone who owns or occupies land within 50 metres of the premises concerned (and not just within four metres, as at present). The Licensing Board will still be required to seek to consult a community council which is – or the Board considers to be – “inactive”, for example, by sending details of an application to the last known contact address.

Period of consultation

56. The Bill also provides that, for premises licence applications and applications for a variation, the period for lodging an objection or making representations in relation to an application be extended to 42 days. (At present, consultees only have 21 days in which to respond.) This additional time is likely to be particularly useful for community councils, which may only meet monthly and wish to consult local people before reaching their own view.

Display of notice

57. Currently, the applicant is required to display a notice at or near the premises for a period of 21 days. The Bill extends this requirement to 42 days, in line with the extended consultation period. Under the current legislation, if a Board considers that such a notice has not been displayed for the whole of the relevant period, it may require the applicant to display the notice for a further 21-day period. Under the Bill, Boards will have the power to require applicants to re-display the notice for any period the Board considers necessary to ensure that the notice is displayed for a total period of 42 days.

Alternative approaches

58. The consultation focussed on applying the approach adopted in New Zealand with regard to community involvement. There was a mixed response to the proposal to implement the New Zealand model, partly based on a recognition that the current Scottish system (implemented by the 2005 Act) does not require premises licences to be periodically renewed. Some respondents supported the proposal in principle but considered that the measure should be evaluated to assess the practical experience of implementation. Other respondents were opposed to the proposal, primarily on the grounds that current licensing arrangements, regarding community involvement were, in their view, satisfactory.

59. The member is convinced that licensed premises have a considerable impact on the lives of residents within the local community. Having considered the consultation responses in relation to the New Zealand approach, the member accepted that it was not an appropriate model as it would have required reintroducing in Scotland a requirement for periodic renewal of premises licences, which would have been an overly burdensome approach. Instead, the member wishes to strengthen aspects of the current system, particularly the rights of local people to make representations direct to the Licensing Boards when they do not have an active community council through which to channel their views.

Consultation

60. The consultation related primarily to consideration of the approach taken in New Zealand to consult communities in these matters. There was a mixed response on this issue, albeit that half of respondents were in general agreement with the proposal that communities should be consulted. Among the reasons given in support were that it was crucial to consult local communities when premises licences were being renewed or extended, and that Licensing Boards should publish detailed information about licences in force in their area in order to improve monitoring of licensing, consumption and harm trends and thereby inform policy formulation. This was also considered to be a benefit to community groups and others wishing to engage with local licensing decisions.

61. Some respondents, whilst supportive of the proposition in principle, nevertheless, did express some notes of caution. For example, NHS Fife felt that the measure would merit testing and evaluation in order to assess the practical aspects of implementation, while NHS Lothian suggested that the proposal would be worthy of more systematic assessment.

62. Those who were opposed to the proposal tended to consider that current arrangements were satisfactory. For example, Heineken and NHS Highland were of the view that community neighbours already had ample opportunity to engage in the licensing process through local licensing forums, community councils and local drug partnerships. Renfrewshire Licensing Board and the Wine and Spirit Trade Association, Scottish Grocers' Association and the Scottish Retail Consortium took the view that the potential costs of the proposal would outweigh any benefits. On the other hand, the Association of Scottish Police Superintendents and the City of Glasgow Licensing Board stated that the existing provision of the 2005 Act that "any" person can apply to a Board to review a premises licence is sufficient.

63. The member has taken on board the views expressed during the consultation but considers that the scope for consultation with local communities in relation to licensing decisions, particularly in relation to situations where community councils are inactive, requires to be strengthened. Accordingly, the Bill adopts a proportionate approach to seek to enhance consultation in licensing decisions that builds upon the existing licensing regime.

Restrictions on advertising of alcohol (Chapter 2, sections 6 to 13)

Policy objectives

64. Sections 6 to 13 of the Bill deal with restrictions on the advertising of alcoholic drinks, particularly in contexts where they are likely to be seen by people under the age of 18, in order to "de-normalise" alcohol to such young people. In particular, it bans alcohol advertising in the vicinity of schools, nurseries, crèches and play areas (section 6), within retail premises (other than in the parts of those premises which are licensed) (section 8) and at sporting and cultural events that mainly involve or are principally aimed at under-18s (section 9).

65. The member originally intended to include a restriction on alcohol advertising at cinema screenings aimed at under-18s, but this is considered likely to be outwith the Parliament's legislative competence, so has not been included in the Bill.

Background

66. The so-called “Loi Evin” in France sets out clear definitions of alcoholic drinks (containing over 1.2% alcohol by volume) and clear guidance on how the law is applied, including that no advertising should be aimed at children, or allowed on television or in cinemas, and alcohol sponsorship of cultural or sporting events is also banned.

67. In his consultation, the member drew on the experience of the Loi Evin, which appeared to have made a positive contribution to the reduction in problem drinking in France. The key theme of this measure is that there should be progress made towards de-normalising alcohol for young people.

68. While not seeking to copy the French legislation directly (which would not be possible in terms of legislative competence) the member has used the Loi Evin model as a “template” to introduce a number of different restrictions which he considers will complement advertising standards and the Portman Group Code of Practice.²² That Code seeks to ensure that alcohol is promoted in a socially responsible manner and only to those aged over 18 and states that it (the Code) “does not apply to wholesaler or retailer-led promotional activities” unless under specified circumstances.

Ban on alcohol advertising near schools etc. (sections 6 and 7)

69. The Bill imposes a restriction on alcohol advertising within 200 metres of certain premises which are used primarily by children (schools, nurseries and crèches, and children’s play areas).

70. These restrictions will apply to advertisements on billboards, hoardings, bus shelters, etc., and to advertisements in or on licensed premises (other than those intended primarily to be seen from inside the premises). This will include, for example, the display of bottles or cans of alcohol in the windows of off-licences, and of “A-boards” advertising alcoholic drinks offers outside shops, pubs or restaurants. However, pub signs or notices providing factual information (such as the name of the licensee) are exempted.

71. The restriction on advertising in the vicinity of a nursery or crèche applies only to premises used mainly for that purpose. The provisions will not affect places such as a church hall, for example, which may “host” a nursery on an occasional basis. Similarly, the restriction on advertising in the vicinity of a children’s play area applies only to outdoor facilities that are specifically designed or adapted for that purpose (for example, a swing-park). Other open areas where children routinely play (such as a grassed area in a park) would not be affected.

Advertising within licensed premises (section 8)

72. There is currently nothing to prevent supermarkets or other retail outlets from advertising alcoholic products throughout their premises, even though only a specific part of those premises

²² Portman Group. (2013) *Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks: Fifth Edition*. Available at: http://www.portmangroup.org.uk/docs/default-source/code-of-practice/7609_por02_code_of_practice_final.pdf

is actually licensed (to sell alcohol for consumption off the premises). As a consequence, it is possible that people in, for example, the tea and coffee aisle may be encouraged to take advantage of drinks promotions, having not originally intended to purchase any alcohol.

73. The Bill aims to prevent this by restricting alcohol advertising to the licensed area (for example, to those aisles in a supermarket in which alcoholic products are displayed, plus the check-out area).

Advertising at sporting and cultural events (section 9)

74. A restriction is imposed on advertising at public sporting or cultural events primarily involving under-18s (either as participants or the intended audience). The aim is to protect children from exposure to alcohol advertising (including through sponsors' branding) while they are attending events aimed specifically at them, but without this unreasonably restricting such advertising in other contexts (including where events are aimed mainly at adults, but have some children in attendance).

75. In the context of "sporting events", the restrictions only apply to events held within premises, so would not apply to events held in open public spaces, such as an on-street marathon or beach-volleyball match. Where the venue is within larger premises (such as a squash court within a larger sporting complex), the restrictions do not apply to the rest of those premises. In relation to "cultural events", the restrictions would apply to a wide range of exhibitions and performances, from pantomimes to rock concerts and art exhibitions. Here, too, events that are not held within premises (for example, by street performers) are not covered, and the restrictions would only apply to the venue (such as a hall, gallery or auditorium) in which the event is taking place, and not the rest of any larger premises in which that venue is located (for example, the theatre bar or foyer). Included within the restrictions under this provision is any advertising of alcohol products on clothing (such as a sponsor's logo on a football shirt).

Penalties and enforcement (sections 10-12 and the schedule)

76. A breach of any of the prohibitions on advertising of alcohol is a criminal offence, committed by a person who knowingly causes or permits the advertising in question. (For retail premises and sporting and cultural events there is an additional requirement that the alleged offender is in a position of management or control of the premises or event.) The maximum penalty is a fine of up to £5,000, but there is also provision (in the schedule) for local authorities or the police to enforce these provisions by means of a fixed penalty of £200. The member considers a criminal sanction, backed by a substantial maximum fine, necessary (as a back-stop) to ensure compliance with these restrictions, but believes that the fixed penalty regime would be much simpler and more effective in the majority of cases.

Alternative approaches

77. A number of respondents to the consultation suggested that the Scottish Government should urge the UK Government to develop UK-wide approaches and target all advertising that can be viewed by children, which would provide some consistency across the board.

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78. Some respondents supported the so-called “Loi Evin” framework, noting that this law had been upheld by the European Court of Justice, which found the measure to be proportionate, effective and consistent with the EC Treaty.

79. The Advertising Standards Authority suggested that there was no need for change, as the rules set out by the Committee of Advertising Practice are already adhered to.

80. While the member acknowledges that the voluntary system (whereby the industry chooses to submit adverts to the Portman Group to be measured against the voluntary code) has had some effect, he considers that it will be of greater benefit for advertisers, producers and others to have certainty over what they can and cannot do.

Consultation

81. The member’s consultation drew support from 81% of respondents who addressed this area, with views expressed that advertising could reinforce gender stereotypes (for example, beer drinking could be associated with men playing sports, or wine drinking associated with “glamorous” women).

82. It was noted that almost 70% of the expenditure on alcohol advertising was centred around events or promotions where the potential exposure of children to advertising was difficult to regulate.²³

83. The Law Society of Scotland considered that an additional positive outcome, other than the intended purpose of “de-normalising” alcohol for children, was that such restrictions have the potential to encourage an increase in responsible drinking.

84. Others, including the Scottish Retail Consortium and the Scottish Grocers’ Federation, argued that there was no reason to introduce change, on the basis that there was no evidence to suggest a ban on alcohol advertising would be effective and that the UK already has some of the strictest restrictions on alcohol advertising and marketing.

Alcohol education policy statements (section 14)

Policy objectives

85. Section 14 places an obligation on the Scottish Ministers to lay before the Parliament and publish, every five years, a statement of their policy on the provision of public information and education about alcohol consumption. The Scottish Ministers are also required to review the effectiveness of the policy and its implementation and report any conclusions arising from this review before the publishing and laying of new statements.

²³ Alcohol Focus Scotland. Response to the member’s consultation. (See footnote 4).

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Background

86. Public education and information programmes are usually most effective when applied not in isolation but as part of a wider package of alcohol policy measures. For example, the World Health Organisation comments that:

“While providing information and education is important to raise awareness and impart knowledge, by themselves information and education do not lead to sustained changes in alcohol-related behaviour.”²⁴

87. In particular, there is international evidence that targeted interventions can be effective where they are aimed at changing attitudes as well as providing factual information – an example of such an approach being the “Blue Book” produced by the International Centre for Alcohol Policies.²⁵

88. The Scottish Government’s approach to tackling alcohol is set out in *Changing Scotland’s Relationship with Alcohol: A Framework for Action*²⁶ published in March 2009. The Framework contains a wide package of measures, including enhancing education and diversionary activity, and developing partnership work with the alcohol industry. The Scottish Government published a progress report on the Framework in February 2012.²⁷ The member would like to see greater parliamentary scrutiny of this programme of measures and increased ministerial accountability for its performance.

89. In addition, as a result of the *Framework for Action*, NHS Health Scotland was tasked with evaluating the effectiveness of the Scottish Government’s Alcohol Strategy. NHS Health Scotland reports on an annual basis on the effectiveness and progress of the Scottish Government’s work on tackling alcohol misuse.²⁸

Alternative approaches

90. While there is clearly a fair amount of work being done on monitoring, maintaining the status quo is not considered to be an adequate option, as it lacks a direct mechanism via which the attention of the Parliament can be drawn to the outcomes emerging from evaluation of Scottish Government alcohol policies. Accordingly, the member considers that the proposed measure provides a proportionate means by which the Scottish Government can consolidate the findings of evaluation of its alcohol policy and bring it to the attention of the Scottish Parliament.

²⁴ World Health Organisation. (2009) *Evidence for the effectiveness and cost-effectiveness of interventions to reduce alcohol related harm*, page 9. Available at:

http://www.euro.who.int/data/assets/pdf_file/0020/43319/E92823.pdf

²⁵ International Centre for Alcohol Policies. (1995 – 2015) *ICAP Blue Book: Practical Guides for Alcohol Policy and Prevention Approaches*. Available at:

<http://www.icap.org/PolicyTools/ICAPBlueBook/>

²⁶ Scottish Government. (2009) *Changing Scotland’s Relationship with Alcohol: A Framework for Action*. Available at: <http://www.scotland.gov.uk/Publications/2009/03/04144703/0>

²⁷ The Scottish Government. (2012) *Changing Scotland’s Relationship with Alcohol: A Framework for Action, Progress Report, February 2012*. Available at:

<http://www.scotland.gov.uk/Resource/0038/00388540.pdf>

²⁸ NHS Scotland. (2014) *Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS) report*. Available at: <http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx>

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91. An option of producing statements which are not laid before the Parliament has been rejected since it would be weaker in terms of making the Scottish Ministers accountable.

92. Other options for the frequency of the production of statements were considered, but it was felt that a five year cycle is sufficiently long to allow time for policies to bed in, and to assess whether they work in practice.

Consultation

93. In his consultation, the member sought views on whether there was a role for further alcohol education and public education campaigns in changing alcohol culture.

94. Seventy-eight per cent of respondents were generally supportive of the measure. The following points are illustrative of those who expressed qualified support and made suggestions on how the proposal could be made more effective:

- Education should start early in schools, focussing on healthy lifestyles and also identifying the consequences for individuals to their health and social behaviour if alcohol is abused (City of Edinburgh Council).
- The Association of Chief Police Officers in Scotland (ACPOS) was very supportive of the local education approach and of various community safety initiatives that are currently operational. Education and intervention, ACPOS considered, could only assist in changing the attitudes of children towards alcohol in Scotland.
- Alcohol Focus Scotland, Midlothian and East Lothian Alcohol and Drug Partnership and the British Medical Association (Scotland) felt that, although there is little evidence to suggest that education and persuasion strategies used on their own are effective in changing drinking behaviour, educational campaigners could have a role in a wider strategy to address problem alcohol use if used to support more effective interventions.

95. Those who were not in favour put forward arguments that such measures did little in tackling alcohol-related harm and were less powerful than regulation. The Socialist Health Association Scotland viewed such campaigns as being expensive, raising awareness but not changing behaviour and tending to widen (health) inequalities, with messages being picked up by those in society best placed, able and resourced. Glasgow and Greater Clyde NHS expressed the opinion that alcohol education and public information campaigns are not very effective in preventing excessive alcohol consumption.

96. The consultation also sought views on whether it would be beneficial for the Scottish Ministers to be made directly accountable to the Parliament for their policy in this area. Of the 37 responses to this question, 26 (72%) were in favour of the Scottish Ministers being directly accountable, nine (25%) were opposed and the remaining respondents tended to be undecided.

97. The member does not accept that the obligation on the Scottish Ministers is disproportionate or unreasonable since much evaluation work is already taking place. The provision is designed to ensure that there is Ministerial oversight and a clear line of accountability.

PART 2 - OFFENCES INVOLVING ALCOHOL

98. Part 2 of the Bill consists of measures to tackle offences involving alcohol, and relates to the criminal justice system.

Drinking banning orders (Chapter 1, sections 15 to 29)

Policy objectives

99. Sections 15 to 29 make provision for drinking banning orders (DBOs), which the courts may impose on an individual who has engaged in criminal or disorderly conduct while under the influence of alcohol, in order to protect others from further behaviour of that kind. The orders would operate on a similar basis to those previously introduced in England and Wales under Chapter 1 of Part 1 of the Violent Crime Reduction Act 2006 (“the 2006 Act”).²⁹

Background

100. Under the 2006 Act, DBOs were similar to Anti-Social Behaviour Orders (ASBOs) and were designed to protect the community from a specific range of behaviours associated with an individual’s alcohol misuse. They could be made either on application in a civil court (by the police or a local authority) or on conviction (where the individual had been convicted of an offence committed while he or she was under the influence of alcohol). The court had discretion as to the scope of the ban in each case – for example, by specifying particular licensed premises which the person would not be permitted to enter, by identifying premises by category, or by geographical area, or by including other types of prohibition not relating to licensed premises. The minimum duration for a DBO was two months and the maximum was two years.

101. Both types of DBO were available from August 2009 until October 2014, at which time the provisions of the 2006 Act relating to DBOs imposed on conviction were repealed by the Anti-Social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) and were replaced by Criminal Behaviour Orders (CBOs). The provisions relating to DBOs made on application are set to be replaced by Injunctions to Prevent Nuisance and Annoyance (IPNAs) when the relevant provisions of the 2014 Act are brought into force.

How the DBO process works

102. The Bill provides that DBOs can be made by the sheriff court, on application by a “relevant authority” (the police or a local authority), against any person aged 16 or over who has engaged in criminal or disorderly conduct whilst under the influence of alcohol. DBOs may also be made where a criminal court convicts a person of an offence committed while the person was under the influence of alcohol. In either case, the court must consider that a DBO is necessary to protect other persons from further such conduct.

103. The court, in making the DBO, has discretion in terms of the scope of the ban in each case – for example, by specifying particular licensed premises which the person may not enter,

²⁹ Violent Crime Reduction Act 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/38/part/1/chapter/1>

or by identifying premises by category or by geographical area. In relation to a DBO made on application, the court may make an interim order; and for either type of DBO, relevant parties can later apply for the order to be varied or revoked. Provision is also made for appeals against DBOs, and for any breach of a DBO (without reasonable excuse) to be an offence, punishable by a fine of up to £2,500.

Approved courses

104. DBOs may include a provision which reduces the terms of the order if the subject satisfactorily completes an approved course (relating to alcohol education). Approved courses (under the 2006 Act in England and Wales) were similar in content and structure to the drink drive rehabilitation scheme,³⁰ and it is envisaged that they would be similar in Scotland. The subject of a DBO will be referred by the court to an approved course only if places on such a course are available and if the subject consents. Satisfactory completion of an approved course will enable the individual to reduce the length of their DBO by up to half.

105. If the court decides not to include a provision about such a course, it must give reasons for not doing so, such as: the individual not agreeing to its inclusion; that there is no suitable course available in the area; that the term of the DBO is so short that the offender will be unlikely to have the time required to complete the course; or that an individual would benefit more from an alcohol treatment requirement (ATR). (An ATR provides treatment for offenders who have a proven alcohol dependency as opposed to someone who might be classed as a "binge drinker".)

106. In terms of the Bill, the Scottish Ministers must consider applications for the approval of courses and decide whether to grant or refuse applications. The Scottish Ministers can, through regulations, specify matters such as the nature of applications, the level of fees for attending the courses and the monitoring of courses and withdrawal of approvals.

Enforcement

107. When DBOs were brought into force in England and Wales, the Police National Computer was updated when a DBO was made, to help ensure that the police had access to information about offenders who were subject to a DBO at any particular time, and what the terms of the order were. In Scotland, community officers or local forces could fulfil the role undertaken by neighbourhood policing teams in England and Wales. The relevant authorities would then be advised to ensure that licensed premises are made aware of the individual who is subject to a DBO and is prohibited from entering specific premises, and of the specific nature and duration of the prohibitions which apply to their DBO.

108. In England and Wales, DBOs were normally made known to licensed premises from which a person was banned, support agencies and the public in order to deter the offender from breaching their terms, to enable the public to report breaches, and to demonstrate to the public

³⁰ Driver & Vehicle Standards Agency. *Introducing the drink drive rehabilitation scheme course syllabus*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377671/drink-drive-rehabilitation-scheme-course-syllabus.pdf

that action is being taken against those responsible for alcohol-related disorder. The member envisages that the Scottish Ministers will instruct that the same disclosure process be followed in Scotland and it will be for the Scottish Ministers to set out the terms of how the process will operate.

Breach of a DBO

109. An individual who breaches the terms of a DBO without reasonable excuse will be guilty of an offence, for which the maximum fine will be level 4 on the standard scale (currently £2,500). The Crown Office and Procurator Fiscal Service (COPFS) will be responsible for decisions about prosecuting any breach of a DBO.

Alternative approaches

Community Payback Orders (CPOs)

110. The member considered the possibility of widening the scope of Community Payback Orders (CPOs) to include DBOs. CPOs were introduced by the Criminal Justice and Licensing (Scotland) Act 2010, as an alternative to short prison sentences. A CPO may contain a number of different requirements, including an alcohol treatment requirement.

111. However, an alcohol treatment requirement within a CPO is about provision of treatment for offenders with an alcohol dependency, as opposed to attempting to control “binge drinkers” who may not be alcoholics. Two of the stipulations which must be met before a court can impose an alcohol treatment requirement are:

- the offender is dependent on alcohol;
- the alcohol dependency requires and may be susceptible to treatment.

112. A CPO can only be imposed with the offender’s consent (unless unpaid work or other activity requirement is being imposed as an alternative to imprisonment in a case of fine default). The purpose of DBOs, on the other hand, is to protect the public from undesirable behaviour rather than to provide an alternative to imprisonment or to seek redress for the community.

113. Alcohol treatment requirements within a CPO appear to have a relatively low uptake. Some offenders are placed instead on an “offender supervision order” or a “conduct order” and access alcohol programmes through those routes.

114. One clear disadvantage of the alcohol treatment requirements within a CPO is the amount of time it takes for an offender to be accepted onto the course. Firstly, the offender has to meet the criterion of having an “alcohol dependency”, then a report must be prepared for the court by a partner agency and, in some cases, this is only possible if a period of deferment is granted.

115. The member decided not to follow the route of amending the CPO provision as he believed that it was clear that CPOs would not be suitable for those individuals who might be found to have committed anti-social behaviour whilst under the influence of alcohol but did not necessarily have an alcohol dependency. Another factor the member took into account was the

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length of time involved in the CPO process, which would not help the police or local authorities looking to take quick, preventative action against an individual in order to protect the public.

Anti-social Behaviour Orders (ASBOs)

116. ASBOs are civil orders which deal with anti-social behaviour. Although not specifically designed to tackle alcohol-related behaviour, they can be used for that purpose. The member considered introducing a new type of ASBO based on the Injunction to Prevent Nuisance and Annoyance (IPNA) which was introduced in England and Wales under the Anti-Social Behaviour, Crime and Policing Act 2014. The IPNA is a purely civil order with a civil burden of proof making it much quicker and easier to obtain. There are only civil sanctions for a breach. The IPNA is aimed more at supporting offenders to change behaviour rather than preventing them from doing something.

117. However, the member concluded that legislating for another form of ASBO would be difficult to justify in policy terms because it would be a duplication of existing legislation.

Consultation

118. In his consultation, the member sought views on whether there was support for the introduction of DBOs in Scotland. Those in favour felt that the proposed method might be suitable for repeat offenders and recommended that the ban should relate directly to the premises of the offending behaviour. The Association of Scottish Police Superintendents, for example, believed that:

“There is certainly scope to look in detail at what preventative powers can proportionately be made available to the police to prevent an individual who through their abuse of alcohol cause harm to themselves and others and subsequently consume an excessive amount of public services.”³¹

119. Those opposed raised concerns about how DBOs might affect individuals within vulnerable groups by, for example, inadvertently further criminalising people who had breached an order – in particular young people, alcohol dependent drinkers or those with mental health problems.³²

Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty (section 30)

Policy objectives

120. Section 30 provides for alcohol awareness training to be offered as an alternative to a fixed penalty for people whose offending behaviour appears to be related to their alcohol consumption. This is an early intervention scheme aimed at addressing “binge drinking” and associated anti-social behaviour.

³¹ The Association of Scottish Police Superintendents. Response to the member’s consultation. (See footnote 4).

³² City of Edinburgh Council. Response to the member’s consultation. (See footnote 4).

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121. The scheme aims to reduce the likelihood of a “binge drinker” becoming a future victim or offender in the criminal justice system and to raise awareness of alcohol and its effect on the person and their wellbeing and the wider community. The target audience is not the hardened criminal or the chronic alcoholic.

122. The Bill provides for the establishment of a further pilot in an urban area which, it is expected, would be on a similar basis to the scheme which has already been piloted in Fife, and for the rollout of the scheme across Scotland, subject to the further pilot being evaluated and judged to be a success. This will provide statutory underpinning for the Fife scheme, the pilot and any other schemes, by providing a formal mechanism for revoking a fixed penalty notice in exchange for participation in alcohol awareness training.

123. The benefits of running such a scheme include:

- reducing offending behaviour;
- reducing alcohol consumption;
- reducing crime and improving community safety for the public in general;
- reducing the impact on NHS services;
- reducing costs in the courts (and elsewhere in the criminal justice system).

Background

124. A pilot scheme has been run successfully and rolled out to a number of areas in Fife and this is the basis of the model on which the proposed scheme is envisaged.

125. In 2009, Fife Constabulary, following an agreement with the procurator fiscal and support of other agencies (including the voluntary agency Fife Alcohol Support Service (FASS)), piloted the scheme in the Kirkcaldy area and rolled it out to the rest of Fife in 2010.

126. The original model for the scheme was that piloted in West Hertfordshire for a six-month period in August 2007.³³ The course was assessed for effectiveness at the end of the pilot and, due to its success, was rolled out across the whole of Hertfordshire in April 2008. This scheme enabled offenders issued with £80 fixed penalty notices under public order legislation to reduce the amount payable to £40 by participating in a fine diversion scheme.

127. The pilot run in Fife in 2009 also operated through the fixed penalty process, whereby offenders were identified and offered an alternative to the £40 fixed penalty fine – a brief intervention session.

³³ Public Health England. (2009) *Evaluation of the Hertfordshire Alcohol Diversion Scheme*. Available at: <http://www.alcohollearningcentre.org.uk/Topics/Browse/OffenderHealth/pubs/offenderhealth/?parent=6444&child=6440>

Evaluation

128. An evaluation of the pilot scheme which ran in Kirkcaldy from July to December 2009 showed that 190 referrals were made, with 60 people attending and completing the course. There was a 32% attendance rate, which was higher than the 15-20% expected based on Hertfordshire experience.³⁴ In 2011, a further evaluation of the rolled out scheme found that there was evidence of significantly fewer re-offenders of alcohol-related anti-social behaviour among those who attended the course compared to those who had not participated. From April 2012 to June 2014, 2947 referrals were made, with 1004 people attending and completing the course – a 34% attendance rate.³⁵

The process

129. The following process outlines the operation of the pilot scheme which it is intended would be implemented, based on the Fife experience.

130. Where an offender has committed an offence and a fixed penalty notice has been issued, and it appears that alcohol has been a factor in the offending behaviour, then the offender would be invited to take part in the scheme. If the offender participates in the scheme, the £40 fine would be waived. The Bill contains provision for the fixed penalty notice to be revoked in this situation (new sections 132A(2) and 133(2A) of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”). It is anticipated that a partner agency – in Fife, this is the Fife Alcohol Support Service (FASS) – would organise and run the training programme.

131. The offender would attend an awareness session run by the agency (in Fife this is a one-off three hour session) which would cover knowledge of and common misunderstandings about alcohol, such as:

- Drinking culture and its impact on individuals and communities;
- Physical and psychological effects of alcohol;
- Alcohol and behaviour;
- Understanding units and sensible drinking guidelines;
- Sensible drinking “do’s and don’ts”.

132. The relevant police unit would be advised by the agency when an offender attended and completed a session to ensure the fine was waived. This process would be completed within 28 days of issuing the fixed penalty notice.

133. The Bill extends to those offences – low-level “nuisance” offences often committed by people under the influence of alcohol – which are fixed penalty offences in terms of section 128 of the 2004 Act.

³⁴Fife Constabulary, Fife Alcohol Support Service. *Fife Alcohol Diversion Scheme Pilot – Kirkcaldy – July – December 2009 – Evaluation*. Available at:

http://publications.fife.org.uk/uploadfiles/publications/c64_FASSAlcoholDiversionSchemePilotEvaluation.pdf

³⁵ Email from FASS, September 2014.

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134. Under section 129(1) of the 2004 Act, a police officer who has reason to suspect that a person aged 16 or over has committed a fixed penalty offence in a “prescribed area” may issue that person with a fixed penalty notice. Under section 130(1) and the Anti-social Behaviour (Amount of Fixed Penalty) (Scotland) Order 2005³⁶ the amount of the fixed penalty is £40.

135. Under section 131 of the 2004 Act, the period within which the fixed penalty must be paid is 28 days (after that time, if the penalty has not been paid and the individual has not elected to be tried for the offence, a sum one and a half times the original fixed penalty is recoverable as if it was a fine).

136. The Bill places a duty on the Scottish Ministers to ensure that a pilot along the lines of the Fife scheme (ie whereby fixed penalty notices issued under section 129(1) are revoked in exchange for participation in alcohol awareness training) takes place in an urban area, with such a pilot to be established as soon as reasonably practicable after Royal Assent. Such a pilot will also in practice be dependent on the co-operation of local delivery partners.

137. The Scottish Ministers will be required to have the operation and effectiveness of the pilot evaluated by an independent person, with a report containing this evaluation to be laid before the Scottish Parliament no later than 18 months after the commencement of the pilot. Where the evaluation is positive, a duty will be placed on the Scottish Ministers to ensure that the scheme is extended across the whole of Scotland. Roll-out must be completed within three years of the date on which the evaluation report is laid before the Parliament.

Alternative approaches

138. The member noted that alternative approaches were suggested in the responses to the consultation exercise but nonetheless preferred to follow the route of legislation. Alternative suggestions included one from the Association of Scottish Police Superintendents:

“It is worth noting that Lothian and Borders Police are currently undertaking work which has been developed through their Alcohol Blueprint. This plan aims to effect attitudinal change, influence the wider criminal justice system and provide an evidence-based approach to alcohol interventions ...”³⁷

139. A further suggestion was from NHS Lothian, who indicated that some police in Lothian had been trained in brief interventions and it might be an equally effective measure and less costly.

140. While noting these suggestions, the member is satisfied that the proposed measure would be more beneficial to offenders who had the potential to become more hardened users of alcohol.

Consultation

141. In his consultation, the member sought views on whether alcohol awareness training should be made available on a statutory basis throughout Scotland, if a further pilot scheme was

³⁶ Available at: <http://www.legislation.gov.uk/ssi/2005/110/contents/made>

³⁷ Association of Scottish Police Superintendents. Response to the member’s consultation. (See footnote 4).

successful. Supportive comments for the principle of such schemes included that it was a means of reducing the negative impact of alcohol and allowed offenders to participate in an alcohol education programme rather than pay a fixed penalty fine. In addition, it could be a means of reducing the negative impact of alcohol abuse by assisting in changing behaviour – ACPOS cited the Fife scheme as being an initiative which had been highlighted by the World Health Organisation as an effective means to tackle alcohol-attributable problems, targeting individuals whose alcohol consumption was problematic and for whom early intervention had the potential to reduce drinking levels.

142. A recurrent theme from respondents was that further evidence was required, and any pilots should be fully evaluated before alcohol fine diversion was made available on a statutory basis nationally. These concerns have been addressed by the provision made for a further pilot followed by an independent evaluation.

Offences involving alcohol: notification of offender's GP (section 31)

Policy objectives

143. Section 31 requires a court to notify the relevant GP practice when a person aged 16 or over and normally resident in Scotland is convicted of an offence where, in the opinion of a court, alcohol consumption was a contributory factor. While this would not place any obligation on GPs to take specific action, the aim is to alert them to a potential health issue and enable them to address this with the patient at an appropriate opportunity. This applies only to offenders registered with a Scottish GP practice, and does not extend to visitors to Scotland who commit an offence while in this country.

The process

144. The process begins when a criminal court convicts a person of an offence. The court would be expected to consider whether the offender had been drinking at the time of the offence, and whether this was a contributory factor in the offence committed.

145. In terms of the notification itself, the court would be expected to provide the offender's GP practice with a range of information. This would include the person's name, the date of conviction, the offence for which the person was convicted, and the court's view that alcohol consumption was a contributory factor.

146. The court's obligation to inform the GP practice would only apply where it was aware which practice the offender was registered with. In most cases, this would require the offender to provide that information voluntarily. Circumstances in which the obligation to notify does not apply would include where the offender was not registered with a GP practice, did not know which practice he or she was registered with, or chose not to disclose that information. In that latter situation, there would be no obligation on the court to try to find out by other means (for example, by making enquiries with GP practices near where the offender lives). This was on the grounds that a refusal to supply GP details suggested that the chances of any GP being able to work with the person to address problem drinking were not high.

147. There would be no obligation for the GP to take specific action as a result of the notification, or on the offender to co-operate with any action proposed by the GP. The aim is to ensure that the offender's GP is alert to a potential health issue and is therefore able to raise this with the offender should an appropriate opportunity arise. When and how this would be done would be a matter for the GP's professional discretion (subject to any guidance on the issue that may, in due course, be issued – for example, by the NHS or the General Medical Council).

Alternative approaches

148. GPs currently have a range of mechanisms with which to engage in a dialogue with patients who they may consider have a problem with alcohol. For example, GPs have access to screening tools such as the CAGE questionnaire.³⁸ They are also funded to deliver Alcohol Brief Interventions (ABIs). ABIs are short, evidence-based, structured conversations about alcohol consumption with a patient/service user. The conversation is intended, in a non-confrontational way, to motivate and support the individual to think about and/or plan a change in their drinking behaviour in order to reduce their consumption and thereby minimise the risk of harm to the individual, wider society, and damage to their health.³⁹

149. However, the member considers that current approaches can be unfocussed. In addition, there is currently no requirement on any part of the criminal justice system to inform GPs when a patient is convicted of an offence involving alcohol. Accordingly, there is no systematic approach to make GPs aware of patients who have been convicted of an alcohol-related offence.

150. The member believes that greater communication between the justice system and GPs would help to alert a GP to an individual registered within their practice with a potential alcohol dependency issue and thereby make it more likely a person who has exhibited such behaviour receives any necessary treatment. Enshrining this duty in legislation can only be of assistance in determining early identification and intervention, as appropriate.

Consultation

151. This proposal did not receive a high level of support from respondents to the consultation process. Concerns raised included that the proposal was unlikely to have a significant impact on addressing drinking behaviour by offenders, and that information about criminal convictions would be recorded on a person's medical record. The Scottish Court Service had concerns regarding the financial implications for the service whilst more information was also sought on what GPs would be required to do with the information provided. The member recognised the concerns raised but considers the measure to form part of a "brief intervention approach". The policy has also been developed in a way that minimises the administrative impact on the courts.

³⁸ The CAGE questionnaire is a short assessment tool to indicate problem drinking. It is based on four questions concerning people's feelings to cutting down, annoyance by criticism, guilty feeling, and eye-openers (CAGE). JA Ewing 252(14):1984. Available at:

<http://www.ncbi.nlm.nih.gov/pubmed/6471323>, and

³⁹ ISD Scotland. (2013) *Alcohol Brief Interventions 2012/13*. Available at:

<http://www.isdscotland.org/Health-Topics/Drugs-and-Alcohol-Misuse/Publications/2013-06-25/2013-06-25-ABI-Report.pdf>

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EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

152. While a number of the Bill's provisions have an equalities impact, this should generally be positive - the measures are considered to be justifiable in terms of the overall benefits to individuals and society, resulting in improved health and well-being, as well as a reduction in the costs of dealing with health and criminal justice consequences of Scotland's high levels of alcohol consumption.

Impact on younger people

153. Some of the measures in the Bill have particular implications for younger people.

154. In relation to the removal of the ability of Licensing Boards to discriminate on age grounds, the member believes that not allowing 18-20 year-olds to buy alcohol in off-licences is discriminatory. In this respect, the Bill promotes equal treatment of all of those who are of a legal age to access alcohol.

155. The practice of consuming caffeinated alcoholic drinks in excess is particularly associated with younger people in parts of Scotland. This behaviour can lead to risk-taking and anti-social behaviour and has been specifically linked with violent crime. While a policy of banning such drinks could be seen as restricting the ability of young people to make autonomous choices and to enjoy particular products, if the anticipated reduction in crime and improved health conditions are realised, the overall impact will be a positive one, including on this age group.

156. The provisions on alcohol container marking are intended to be used to address a problem particularly associated with young people (that is, illegal sales to under-age drinkers). The existing age-limit for purchasing alcohol is an important health protection measure, and by enabling it to be more effectively enforced, the Bill should result in a positive impact on this sector.

Other equalities issues

157. The provisions about consultation of premises licence applications propose that consultees have an extension from 21 to 42 days to respond to such applications. This longer consultation period will allow community councils to consult with locally affected groups such as the disabled and black and minority ethnic (BME) groups to make sure that their views are being included. Concerns were raised by the City of Edinburgh Council and the Association of Chief Police Officers in Scotland in their responses to the member's consultation about how drinking banning orders might affect some individuals within vulnerable groups, such as those with mental health problems who may be more likely to be criminalised for inadvertently breaching an order. The courts would have discretion, in setting the terms of the DBO, to take the individual's mental health into account, and would be expected to do so.

Human rights

158. The Scottish Human Rights Commission (“the Commission”) promotes and protects the human rights guaranteed by the European Convention on Human Rights, which form part of the law of Scotland through the Human Rights Act 1998 and the Scotland Act 1998.

159. The member believes that the provisions on age discrimination enhance the human rights principle of equality and non-discrimination (the principle that all individuals are equal as human beings and by virtue of the inherent dignity of each human person). It seeks to do so by removing the ability of Licensing Boards to impose age-related restrictions on access by adults to alcohol off-sales.

160. The Bill gives Licensing Boards a power to vary existing premises licences to include a container marking condition. This could give rise to issues under Article 1 of Protocol 1 should the amendment or variation amount to an interference with a licence-holder’s property rights. However, the rights under Article 1 of Protocol 1 are not absolute and may be interfered with if this can be justified in the public interest, is proportionate and is in accordance with the law. The member considers that a container marking condition places a minor administrative burden on licensees subject to it, while providing important assistance in tackling more effectively the sale and supply sources of alcohol to under-age drinkers.

161. The provisions on community involvement should promote fairness by re-balancing the rights of licence holders (and applicants) with the rights of those who live in the local community by giving the latter more scope to become involved in licensing decisions. This may enhance their rights to a private life and/or their peaceful enjoyment of their possessions – by strengthening their rights to object when their lives are potentially disrupted by noise or anti-social behaviour associated with a local pub or off-licence.

162. Restrictions on advertising may give rise to issues concerning freedom of speech. However, this freedom is also a qualified one under the Convention, and there is established case-law that regulation of commercial forms of speech may be justified in the interests of protecting public health.

163. The provisions on DBOs may interfere with the private lives of those subject to such orders to some extent, and in some circumstances also with their freedom of association. However, the relevant rights under the Convention are qualified ones which may be interfered with to protect the rights and freedoms of others. DBOs may only be imposed where this is necessary to protect others from the criminal or disorderly conduct of an individual while that person is under the influence of alcohol.

164. Concerns were expressed during consultation⁴⁰ that the policy on GP notification raises possible human rights concerns under Article 8 (respect for private and family life) of the Convention, namely that it would require sensitive information to be given out to third parties. The member, however, believes this concern has largely been addressed by the way the

⁴⁰ British Medical Association (BMA) and Scottish Health Action on Alcohol Problems (SHAAP). Responses to the member’s consultation. (See footnote 4).

provision has been drafted. As it applies only to people convicted of an offence (where alcohol was a contributory factor), the information passed to GPs should largely be information that is already in the public domain. In addition, the obligation to notify only applies if the GP practice is known to the court, meaning that deliberate non-disclosure by the convicted person can block notification. In any case, the member believes that any limited interference with the convicted person's Article 8 rights is justified in the circumstances by the benefits which will result from GPs being better informed about their patient's problem alcohol consumption, and so better able to advise and offer appropriate treatment to them. GPs can be expected to treat the information received as confidential, in the same way as other personal information they have about their patients.

Island communities

165. The provisions of the Bill apply equally to all communities in Scotland. Some aspects of the Bill may, however, have a differential impact on island communities. For example, it may be more challenging to police the restriction of alcohol advertising (sections 6 to 13) in island communities with a wide geographical spread.

166. The policy on alcohol awareness training may raise some specific issues regarding the remoteness of island communities and the provision of alcohol awareness training if these courses are not run where an offender resides as a matter of course.

167. The provisions on DBOs allow for the prohibition of an individual from entering licensed premises or from a specified geographical area. This could be particularly effective in an island community, where there are only a few licensed premises and travelling further afield is generally impractical. For the same reasons, however, the provisions would need to be used proportionately, so that the subject of the order does not become socially excluded and isolated. It may also be more difficult for a person living on an island and who is served with a DBO to attend an approved course (as the nearest venue may be on the mainland), and this would have to be taken into account when the court is deciding on the terms of the order.

168. The provisions on age discrimination in relation to the purchasing of alcohol are likely to be particularly important for young people living in island communities. For an 18-year-old in mainland Scotland, it is easier to bypass any local restriction on alcohol purchasing (by travelling to the next town or a different off-licence). On an island, where there may only be access to a much smaller number of retail outlets, an age-related restriction could be much more onerous.

169. The requirements for community consultation on applications for premises licences (or variations of those licences) may have a lesser impact on island communities. Community councils are more likely to be inactive in urban areas⁴¹ therefore it can be expected that island communities will be more likely to be served by an active community council and that the need to expand the area of consultation will be triggered less often in these areas. In addition, where an expanded consultation area does apply, this may make only a relatively small difference to the number of people who require to be consulted, given the reduced likelihood of the licensed premises being surrounded by other premises in an island context.

⁴¹ Scottish Government. (2013) *Survey of Local Authority Community Councils*. Page 18, Chart C2: Available at: <http://www.scotland.gov.uk/Publications/2013/12/4654>

Local government

170. The Bill's provisions cover a number of areas which impact on the functions of local government.

171. In particular, Licensing Boards will be involved with the provisions in Chapter 1 of Part 1. It is likely that Licensing Standards Officers (LSOs) and/or community wardens (along with the police), as appropriate, will be responsible for enforcing new licence conditions imposed by that Chapter.

172. Licensing Boards will also require to be aware of the removal of the ability to impose age-related restrictions on licence conditions.

173. In terms of the requirements for community consultation on applications for, or to vary, premises licences, Licensing Boards will be required to consult more widely in some cases, and to ensure that notices are displayed within the community and accessible on the local authority's website for the appropriate period.

174. In terms of the advertising provisions, local authorities will be responsible for enforcing the restrictions on advertising alcohol near schools, nurseries, crèches and children's play areas; within licensed retail premises that are part of larger retail premises; and at sporting and cultural events. LSOs (or other officers approved by a local authority) will have the power to issue Fixed Penalty Notices. (This power is also conferred on police constables.) Local authorities will be responsible for managing payments of fixed penalties and allocating to their accounts. Where an FPN is considered to have been issued in error, local authorities may issue a notice withdrawing the FPN.

175. Licensing Boards will have responsibilities to ensure that licence holders are made aware of the new, mandatory condition of their licence in relation to caffeinated alcoholic drinks, which will also apply to occasional licences (covering the sale of alcohol at temporary events). The same responsibilities will apply with regard to licence conditions on multi-pack discounting.

176. For container marking, Licensing Boards will be able to vary premises licence conditions and it is likely that LSOs or community wardens (along with the police) will be responsible for checking premises and identifying codes on containers.

177. Local authorities will have the power to apply for drinking banning orders (under Chapter 1 of Part 2), and may also have a role (in conjunction with the police) in enforcing such orders (whether made on application or on conviction), for example by ensuring that publicans are informed of who is banned from their premises.

Sustainable development

178. The UK Shared Framework for Sustainable Development⁴² was adopted by the Scottish Government in 2005. Commitment to the Framework was reaffirmed in the recent draft Scottish

⁴² Scottish Government. (2005) News release. Available at:

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Planning Policy.⁴³ The Framework includes the principle: “Ensuring a Strong, Healthy and Just Society – meeting the diverse needs of all people in existing and future communities, promoting well-being, social cohesion and creating equal opportunity for all”.

179. The Bill’s provisions support social justice and interests of local communities. The Bill provides for better engagement with communities in the granting of liquor licences and also introduces enforcement powers for Licensing Boards and the police to tackle anti-social behaviour. The measures would contribute to safer and more sustainable communities by addressing the kinds of problems that can degrade the surrounding environment, potentially undermine the local economy and lead local communities to feel excluded from shared public spaces.

180. The Bill will contribute towards a reduction in the negative social and economic cost of alcohol misuse by giving responsibility to organisations and individuals alike, and by encouraging awareness and empowerment, thereby improving social cohesion.

181. The Scottish Government’s National Performance Framework, *Scotland Performs*, measures and reports on progress in creating a more successful country, with opportunities for all to flourish through increasing sustainable economic growth.

182. The Bill will contribute towards a number of targets and outcomes set out in the National Performance Framework, including: increasing healthy life expectancy; improving productivity; our young people are successful learners, confident individuals, effective contributors and responsible citizens, and we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

183. The restriction on multi-pack discount offers will encourage retailers and licensees to act responsibly, while the ban on advertising in the vicinity of schools etc. should help to “de-normalise” alcohol to children. The provision on container marking should encourage not only the licensee to act responsibly, but also the individual friends and/or relatives of the under-age individual. These and other measures should reduce the rate of alcohol-related crime and anti-social behaviour.

184. The provisions on community involvement will empower local groups or individuals to have their say in consideration of licensing applications. This should enhance social cohesion, by reducing the frustration people feel when they have no input to decisions that affect them.

185. Provisions around education and awareness training, particularly on alcohol awareness training, can have a significant positive impact in sustainable development terms. By encouraging people to address their excess alcohol consumption, these provisions tackle the underlying cause of their offending behaviour, rather than simply punishing the behaviour itself. In the longer term, this should improve community safety and reduce the impact on the NHS.

<http://www.scotland.gov.uk/News/Releases/2005/03/07102535>

⁴³ Scottish Government. (2013) *Draft Scottish Planning Policy for consultation*. Available at: <http://www.scotland.gov.uk/Publications/2013/04/1027/3>

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186. The Bill can contribute to improving the local environment and empowering communities by reducing the amount of litter and vandalism resulting from anti-social behaviour, making the local community more confident to access its green spaces.

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ALCOHOL (LICENSING, PUBLIC HEALTH AND CRIMINAL JUSTICE) (SCOTLAND) BILL

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