

CONSULTATION ON RESTRICTING ALCOHOL ADVERTISING AND PROMOTION DRAFT RESPONSE

Question 8

Do you think we should prohibit alcohol marketing outdoors, including on vehicles, and in public spaces in Scotland?

The West Dunbartonshire Licensing Board ("the Board") is responsible for regulating the sale of alcohol and the operation of premises that are licensed for the sale of alcohol. The Board, when exercising its functions in terms of the Licensing (Scotland) Act 2005 ("the 2005 Act"), must have regard to the licensing objectives set out in section 4 of the 2005 Act. The following of these objectives are particularly relevant to this consultation: protecting and improving public health and protecting children and young persons from harm.

The marketing of alcohol outdoors is a matter that largely falls outwith the remit of the Board. As matters stand, it is a mandatory condition of a premises licence that drink promotions do not take place within the vicinity of the premises (200m from the boundary of the premises). With that in mind, the Board has limited comments in relation to this matter.

The Board is of the view that the restrictions on the marketing of alcohol outdoors will have a significant impact on licensed premises in West Dunbartonshire. In particular, these restrictions will impact on how licensed premises present themselves. This will include the frontage of premises and barriers delineating any outdoor area or similar that premises may utilise.

The consultation document does not narrate in detail how this prohibition will be enacted and enforced. The Board would welcome the opportunity to comment on these proposals once further detail is available. (See comments in response to Question 35.)

As the Scottish government will no doubt be aware there are a number of premises in West Dunbartonshire that are either involved in the production of alcohol (e.g. breweries or distilleries) or play a part in the local tourist trade. The Board sees such premises as being important to West Dunbartonshire, bringing employment and investment to the local area.

In the Board's experience, breweries or distilleries may have ancillary off-sales or on-sales facilities, and premises catering for tourists may rely on a link to alcohol products produced in Scotland. This will extend to their exterior branding and appearance. Such premises may struggle to comply with a restriction on alcohol marketing, i.e. the premises' name and branding will align with their alcohol product.

The Scottish government may also consider potential issues flowing from the use of outdoor spaces as licensed areas. The use of licensed outdoor drinking areas has increased recently (accelerated by restrictions due to the covid-19 pandemic). Such areas may be visible from the public spaces and may form part of the public space,

e.g. street cafés. The Board would welcome clarity as to whether the policy intention is that any prohibition would capture such areas.

Question 10

What, if any, exceptions do you think there should be to prohibiting alcohol marketing outdoors, including on vehicles, and in public spaces in Scotland?

As noted in the Board's response to Question 9, such a prohibition may cause difficulties for alcohol producers and premises catering for the tourist trade. As such, the Scottish government may wish to consider whether there are grounds to create exemption for such premises.

Question 11

Do you think that we should further restrict the visibility of alcohol in retail environment, giving reasons for your response?

The Board licences a range of off-sale type premises from supermarkets to convenience stores to dedicated off-sales. These premises range in size from small to large. Amending the rules around the visibility of alcohol in retail environments will significantly impact the aforementioned premises.

By way of background, the Board is of the view that it has limited powers to regulate the location of alcohol within licensed premises. While the 2005 Act sets out that the area for the display of alcohol is agreed with the Board, this location can be varied by way of a minor variation application. This application is subject to a "must grant" provision, i.e. the Board has no discretion when determining the application (provided that there is no increase in the size of that area).

The Board is, of course, supportive of evidence based measures that will promote and improve public health. It does, however, have a concern as to how such measures will be implemented and enforced. Further detail will be useful and the Board welcomes further engagement with the Scottish government. The Board suggests that it is important that any new legislative framework is based on robust evidence and clearly sets out the role and powers of licensing boards.

The Board does have a concern that it may be difficult to implement a framework that prescriptively manages the location of alcohol in a retail environment. For example, any framework would need to consider all possible settings for the display of alcohol and this may be complex given the diverse range of retail type premises and the potential for rapid changes owing to changes in shopping habits or technological advances. Therefore, the Board would welcome clarification from the Scottish government as to whether restrictions around the display of alcohol will be left to the discretion of licensing boards by way of a policy based solution or will the restrictions be prescribed by legislation?

In addition, the Board suggests that the Scottish government consider how such advertising restrictions will impact existing licensed premises. Will premises with an existing premises licences require to conform with any restrictions or will restrictions only apply to new premises? Will premises be required to apply for a variation? If so, this will have significant resources implications for the Board's support staff.

The Board anticipates that many existing licensed premises may struggle to comply with any restrictions, e.g. restricting the use of mixed alcohol and non-alcohol aisles or moving alcohol behind the till. This may be due to the physical layout of the premises or a lack of funds to implement the changes. What would happen should the licence holder say changes are not practical?

It is appreciated and recognised that these proposals are at a formative stage, however, clarity on the impact on existing licensed premises is important especially given that any action to remove or vary a licensed permission may result in a legal challenge.

Separately, the Board also notes the reference to alcohol being moved to either the back of the store or to a separate aisle and in the Board's experience, there can be reasons relating to the licensing objective of preventing crime and disorder for the alcohol display to be located elsewhere, e.g. next to the tills, so to allow for ease of supervision to prevent shoplifting or similar undesirable behaviour.

Question 12

Do you think we should consider structural separation of alcohol in Scotland to reduce the visibility of alcohol in off-trade settings (e.g. supermarkets)

As a licensing board, the Board's responses are focused on the liquor licensing regime and its impact on the licensing of premises that sell alcohol. It is not in a position to comment on the merits of such a proposal. It can, however, advise that the structural separation of alcohol would create a significant licensing impact, with the layout of all licensed premises being required to be amended. This would require scrutiny by the licensing board and therefore, would impact on its workload. Reference is made to our response in Question 11 in relation to the impact on existing premises.

Question 14

Do you think that we should prohibit the sale of alcohol-branded merchandise in Scotland?

The Board suggests that should the Scottish government pursue this option, any legislation must set out a detailed definition of what alcohol-branded merchandise is so to allow for efficient enforcement.

Question 17

What, if any, other restrictions do you think should be considered on the use of alcohol brands on non-alcohol products?

The Scottish government may wish to consider whether the restrictions and limitations set out in Paragraph 13 of Schedule 3 to the 2005 Act in relation to branded newspapers, magazines or other publications being permitted outwith the alcohol display area provided it "*does not relate only or primarily to alcohol*" continues to be fit for purpose. In the Board's experience, retailers can interpret this rule to permit advertising of alcohol in other parts of the store provided that it does not only relate to alcohol. If there is no legislative change, further guidance as to

what "does not relate only or primarily to alcohol" means would be useful, e.g. is it satisfactory if less than 50% of a poster is dedicated to alcohol?

Question 35

How do you think that any future alcohol marketing restrictions in Scotland should be monitored and enforced?

The Board agrees with the Scottish government's contention that the use of Licensing Standards Officers is *"unlikely to be practicable for the types of restriction covered in this consultation..."* especially in respect of the restrictions that impact on society at large.

The Board does, however, note that certain aspects of the proposed restrictions, especially in relation to in-store alcohol marketing, may well be regulated by way of conditions attaching to a premises licence and therefore, Licensing Standards Officers will have a role in terms of commenting on new applications, i.e. does the layout plan comply with the terms of the 2005 Act (as it may be amended as a result of any changes further to this consultation), and enforcement action.

It is requested that any additional conditions or legislation that restricts the display of alcohol in-store is clear and easily applied to all licensed types with sufficient guidance to allow Licensing Standards Officers to take robust enforcement action in the confidence that any decision taken by a licensing board will stand up to judicial scrutiny.