



Scottish Health Action on Alcohol Problems (SHAAP) response to House of Lords Select Committee on the Licensing Act Consultation

September 2016

Scottish Health Action on Alcohol Problems (SHAAP) welcomes the opportunity to comment on the 2003 Licensing Act. SHAAP provides the authoritative medical and clinical voice on the need to reduce the impact of alcohol related harm on the health and wellbeing of people in Scotland and the evidence-based approaches to achieve this.

SHAAP was set up in 2006 by the Scottish Medical Royal Colleges through their Scottish Intercollegiate Group (SIGA). SHAAP is governed by an Executive Committee made up of members of the Royal Colleges and Faculties in Scotland.

SHAAP works in partnership with a range of organisations in Scotland and beyond. Key partners include Alcohol Focus Scotland, the British Medical Association (BMA), the Scottish Alcohol Research Network (SARN), the Alcohol Health Alliance, the Institute of Alcohol Studies, Eurocare and the European Public Health Alliance (EPHA).

Question 1

Are the existing licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

In Scotland, the Licensing (Scotland) Act 2005 contains a fifth objective of 'protecting and improving public health'¹ and we call on the UK Government to prioritise the introduction of this objective to ensure the protection of health and wellbeing is accounted for in licensing decisions, and to minimise the impact on alcohol-related (health) harm.

The protection of health and wellbeing should be an additional objective and must be treated with equal weight and value to the four other objectives, sufficiently enabling the health impacts of alcohol licensing decisions on individuals and local communities to be accounted for.

Question 2

Should the policies of licensing authorities do more to facilitate the enjoyment by the public licensable activities? Should access to and enjoyment of licensable activities by the public. Including community activities, be an additional licensing objective? Should there be any other additional objectives?

No comment.

¹ Scottish Executive (2007) Licensing (SCOTLAND) Act 2005 – Section 142 - Guidance for Licensing Boards
<http://www.gov.scot/Resource/Doc/175487/0049459.pdf>

Question 3

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to objective?

No comment.

Question 4

Do all responsible authorities (such as Planning and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

We believe there is much greater scope for joined-up, multi-stakeholder action on licensing. Alcohol-related outcomes are influenced by key planning decisions, health and safety regulations, and broader environmental factors, all of which are known to contribute to healthy and wealthy spaces, places and communities.

Local communities are one group of stakeholders particularly removed from and not effectively engaged in licensing decisions in Scotland. This is stratified by social economic characteristics. Scottish Government figures reveal that 84% of community councils are considered to be active, although those situated in deprived areas were, overall, much less likely to be active². This is highly problematic in relation to reducing alcohol-related harm, as the greatest harm is known to be situated in deprived communities, and concentrated among hazardous and harmful drinkers. Furthermore, alcohol outlet density is greater in these deprived communities - 40% more outlets - where there is also a greater concentration of off-license premises, making alcohol more readily available³. The uneven distribution of negative retail and economic environments, in relation to alcohol, exposes individuals in the most disadvantaged areas to the greatest harm. Encouraging and widening participation of all communities is therefore essential to ensure that licensing decisions reflect local areas and take account of their needs.

In 2015, a Private Members Bill - Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill - was introduced to the Scottish Parliament which contained two proposals for greater community involvement in licensing decisions. The first was, where there is no community council for the area or the community council is inactive, written notification of the application must be given to all neighbours within a 50m radius. The current requirement is notification of those within a four metre radius. It was suggested this would result in more individuals being directly notified of licensing applications, and in urban areas, the number could rise substantially due to population density. The second proposal was to double the public notification periods for licences from 21 to 42 days. The purpose of this was to give those affected more time to lodge an objection. In particular, it was noted this may give community councils the chance to meet and consult before submitting a

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

³ Shortt, N.K, C. Tisch, J. Pierce, R. Mitchell, E.A Richardson, S. Hill, and J. Collin (2015) A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation, BMC Public Health 15: 1041 http://download.springer.com/static/pdf/515/art%253A10.1186%252Fs12889-015-2321-1.pdf?originUrl=http%3A%2F%2Fbmcpublichealth.biomedcentral.com%2Farticle%2F10.1186%2Fs12889-015-2321-1&token2=exp=1470231237~acl=%2Fstatic%2Fpdf%2F515%2Fart%25253A10.1186%25252Fs12889-015-2321-1.pdf*~hmac=f35e9226c20075cbcf35b8ed66373a3a06e1988f5d4d883babb7a42075e4a6b7

response or objection⁴. In our response to the Scottish Government's consultation on the Bill, we supported the proposals, and argued that any measure designed to encourage and better enable community input, particularly in areas lacking a formal representative body, into licensing decisions can only be of benefit in realising important public health goals⁵. We were disappointed to note that the Scottish Government, after consideration, did not recommend the introduction of these proposals or the Bill as a whole. We believe that these proposals are effective ways for increasing community involvement of licensing decisions and call for similar proposals to be outlined for consideration at UK level as part of the Licensing Act.

A good model for encouraging community involvement in alcohol licensing decisions is the Alcohol Licensing Toolkit⁶ for communities produced by Alcohol Focus Scotland. The toolkit is for anyone who wishes to be involved in and learn more about how alcohol impacts on their community, and explains how licensing systems and processes operate in Scotland, outlining some practical tips for getting involved.

Question 5

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

No comment.

Question 6

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises?

Decisions to grant licensing applications must reflect the situation and circumstances of the local area in question. Licensing policy and planning policy should be better integrated; however, this would not necessarily do anything to significantly impact on the abundance of licensed premises.

The Licensing (Scotland) Act 2005 contains a requirement for all Licensing Boards to undertake an assessment to determine the extent to which there is overprovision of licensed premises in their area⁷. This has proved challenging. There is deemed to be a lack of guidance for assessing and determining overprovision, and Boards reported being unsure how to define outlet capacity⁸. Licensing Boards also cannot reduce current availability or capacity in their area; they can only limit increases in capacity.

⁴ SPICe Briefing (2015) Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill
http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_15-61_Alcohol_Licensing_Public_Health_and_Criminal_Justice_Scotland_Bill.pdf

⁵ Scottish Health Action on Alcohol Problems (SHAAP) (2015) Response to Scottish Government Consultation on Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill
<http://www.shaap.org.uk/news/response-to-the-scottish-parliament-s-alcohol-bill.html>

⁶ Alcohol Focus Scotland (2015) Alcohol Licensing in your community: How you can get involved
<http://www.alcohol-focus-scotland.org.uk/media/133477/Community-licensing-toolkit.pdf>

⁷ Scottish Executive (2005) Licensing (Scotland) Act 2005 Contents
http://www.legislation.gov.uk/asp/2005/16/pdfs/asp_20050016_en.pdf

⁸ MacGregor, A, C. Sharp, J. Mabelis and J. Corbett (2013) An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: Final Report
<http://www.healthscotland.com/uploads/documents/21321-RE024%20Licensing%20Act%20Evaluation%20Final%20Report.pdf>

We support and call for better integrated policy which more readily reflects the needs of the local area and community, and enhances their ability to respond to and use Licensing legislation to reflect these needs.

Question 7

Are the subsequent amendments made by policing legislation achieving their objectives? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No comment.

Question 8

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No, we believe that alcohol sales airside should not be exempt from the Act. There are potentially additional risks related to passengers being temporarily displaced and confined within aircraft. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years⁹.

Similar problems can also arise on other forms of transport. The sale and consumption of alcohol on trains can cause specific problems, and can result in additional preloading or on-route loading. In Scotland, since July 2012, Scotrail operated trains currently operate a policy where the consumption of alcohol on trains is banned from 9pm to 10am¹⁰. Since the introduction of the ban, British Transport Police have reported a marked reduction in incidents of anti-social behaviour and disorder¹¹.

The introduction a minimum unit price for alcohol would significantly contribute to a lessening of these problems.

Question 9

The Act was intended to simplify licensing procedures; instead it has become increasingly complex. What could be done to simplify the procedure?

No comment.

Question 10

What could be done to approve the appeals procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

No comment.

Question 11

⁹ BBC news (29/07/2106) Airport alcohol sales to be 'examined' by Lord Ahmad

<http://www.bbc.co.uk/news/uk-36920665>

¹⁰ BBC news (22/06/2012) ScotRail outlines train drink ban <http://www.bbc.co.uk/news/uk-scotland-18549048>

¹¹ Daily Record (23/06/2014) Alcohol ban on trains hailed success as police record decrease in drink-fuelled crimes <http://www.dailyrecord.co.uk/news/scottish-news/alcohol-ban-trains-hailed-success-3054397>

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of 'super-strength' alcohol?

The 2003 Licensing Act is poorly equipped to deal with the off-trade, which has grown two times faster than the on-trade over the last decade. In Scotland, the off-trade now accounts for 74% of total alcohol sales, a level higher than has ever been seen before. The price of this alcohol is also significantly cheaper, being purchased for an average of 52 pence per unit compared to £1.74 in the on-trade¹². Scotland has introduced a suite of legislation to better reflect this shift in consumption towards home drinking. This includes the introduction of a ban on promotions, most significantly multi-buy offers; regulation to restrict the display of alcohol within premises, limiting it to one part of the store; restriction of off-trade selling hours to 10 am to 10 pm; and minimum unit pricing, although this has yet to be implemented.

Evaluation of this legislation by NHS Health Scotland has found their impact to be broadly positive. The introduction of the multi-buy ban (part of the Alcohol Act 2011) was associated with a 2.6% decrease in alcohol sold per adult in Scotland, including a 4% fall in wine sales¹³. This is equivalent to 4.5 million fewer bottles of wine sold in the year immediately following implementation. Significantly, the legislation has contributed to a shift in knowledge and attitudes and there is now increased agreement that alcohol is the drug that causes the most harm in Scotland. Although perhaps moderate, these impacts are nonetheless significant. They are part of a much broader alcohol strategy and effectively highlight the fact that pricing policies will probably have a greater impact on supermarket alcohol sales than licensing on its own.

In terms of controlling under-age sales, the Licensing (Scotland) Act 2005 introduced a test purchasing scheme for limiting sales of alcohol to minors. An extension of Police Scotland's test purchasing scheme could contribute towards reducing the number of outlets where children and young people are able to purchase alcohol. Education and engagement with alcohol retailers in this regard is important to address the knowledge gap that many retailers have¹⁴. At a meeting SHAAP held with Police Scotland in October last year to discuss test purchasing, they stressed that education of the license holder (of an outlet or premise) is key to the success of test purchasing. When an outlet or premise fails a test purchase, it is usually widely publicised in media and the local area, and thus has a much wider impact. This should also be accompanied by stronger enforcement of ID checks. NHS Health Scotland's evaluation of the test purchasing scheme reports that it was positively received by licensing authorities and implemented well but, although deemed necessary, it was not considered sufficient to reduce availability to under-age drinkers on its own¹⁵. It must be accompanied by a broader package of measures to control the price and availability of alcohol.

¹² NHS Health Scotland (2015) Alcohol consumption and price in Scotland, 2015

<http://www.healthscotland.com/uploads/documents/27345-00.%20Alcohol%20consumption%20and%20price%20in%20Scotland%202015%20-%20May2016.pdf>

¹³ NHS Health Scotland (2016) Monitoring and Evaluating Scotland's Alcohol Strategy Final Annual Report March 2016 http://www.healthscotland.com/uploads/documents/26884-MESAS_Final%20annual%20report.pdf

¹⁴ Scottish Centre for Social Research (2007) Evaluation of Test Purchasing Pilot for sales of alcohol to under 18s – Interim Report <http://www.gov.scot/Resource/Doc/166491/0045369.pdf>

¹⁵ NHS Health Scotland (2015) Monitoring and Evaluating Scotland's Alcohol Strategy Final Annual Report March 2015 http://www.healthscotland.com/uploads/documents/26884-MESAS_Final%20annual%20report.pdf

Licensing authorities should have more control over the off-trade sales of ‘super-strength’ alcohol, although it can be questioned whether licensing is the best mechanism through which to do this. An effective pricing policy, like minimum unit pricing, would have a much greater impact. It is widely acknowledged that minimum unit pricing affects cheap, strong drinks such as own brand vodkas, cheap white ciders, and super strength lager, which cause the most harm¹⁶.

Question 12

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Consumption of alcohol can and should be regulated by price, and alongside licensing, price is a key tool for limiting alcohol availability. There is clear and consistent evidence that price is a key factor directly influencing alcohol-related harm. Policies which impact on the price of alcohol are recognised and recommended by the World Health Organisation, and others, as one of their ‘Best-Buys’ for action to improve public health¹⁷.

Alcohol is 54% more affordable today than in 1980. Recent research highlights that in some places of the UK it is possible to purchase the recommended weekly limit of 14 units for as little as £2.17¹⁸. Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%¹⁹. Additionally, it is not only the level but the structure of alcohol taxation which is important. The EU excise duty structure for wine and cider prevents targeting drinks by strength. EU rules are that a 15% wine carries the same excise duty as an 11% wine and a 4% cider the same as a 7.5% cider²⁰. Ciders of 7.5% ABV attract the lowest duty of any product at 5 pence per unit, compared to 18 pence per unit for beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders, sold in 3 litre plastic bottles and closely linked to harmful and hazardous drinking. Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

However, taxation is likely to only have limited effectiveness. Rather than focusing on the drinks which cause the most harm, taxation increases would increase the price of all alcohol products, including those not associated with high levels of harm. Minimum unit pricing, on the other hand, allows the price on the shelf to directly relate to the alcohol content of the product.

Evidence from the latest version of the Sheffield Alcohol Policy Model, which models the effect of introducing MUP in Scotland and compares this to taxation, shows that a 28% increase in taxation would be required to achieve the same reduction in alcohol-related deaths among harmful and hazardous drinkers as would be achieved with a 50 pence minimum unit price (MUP). When compared to a 50p MUP, a 28% increase in alcohol taxes would lead to slightly larger reductions in alcohol consumption among moderate and hazardous drinkers but crucially to smaller reductions in consumption among harmful drinkers, and in particular, harmful drinkers in poverty²¹. The model

¹⁶ <http://www.shaap.org.uk/minimum-pricing-for-alcohol.html>

¹⁷ http://www.who.int/nmh/publications/who_bestbuys_to_prevent_ncds.pdf

¹⁸ Alcohol Concern Wales (2016) Cheap booze on our streets <http://www.alcoholconcern.org.uk/wp-content/uploads/2015/05/40672-ACW-Cheap-booze-on-our-streets-Briefing-E-FINAL.pdf>

¹⁹ Institute of Alcohol Studies (2016), Budget 2016 analysis

²⁰ <http://www.shaap.org.uk/minimum-pricing-for-alcohol.html>

²¹ University of Sheffield (2016) Model-based appraisal of the comparative impact of Minimum Unit Pricing and taxation policies in Scotland http://www.shef.ac.uk/polopoly_fs/1.565373!/file/Scotland_report_2016.pdf

predicts that a minimum unit price of 50p would reduce alcohol consumption in Scotland by 3.5% or 26.3 units per drinker per year. Reductions in consumption are estimated to be largest among harmful drinkers (7%, 246.2 units per drinker, per year) and hazardous drinkers (2.5%, 35.5 units per drinker, per year). The smallest would be seen among moderate drinkers, who would experience an average reduction of 1.2% or 3.7 units per drinker per year. MUP at the suggested price of 50 pence per unit would also have minimal impact on the on-trade, where prices are significantly higher, and would only directly affect products currently sold at less than 50p per unit. Hazardous and harmful drinkers purchase more of this cheap, strong alcohol and it accounts for a greater share of the total amount of alcohol they purchase. MUP thus sets a floor price below which alcohol cannot be sold. Further, evidence from Canada shows that a 10% increase in the minimum 'floor' price of alcohol led to a 14.1% fall in demand and consumption, and a 22% reduction in demand for high strength beer specifically. This was accompanied by an immediate reduction in mortality of 35.25%²². The Canadian experience points to the effectiveness of minimum or 'floor' prices as a means of reducing harmful alcohol use.

A combination of taxation and MUP would be the optimal approach to limiting alcohol availability and for preventing and reducing harm. This would ensure that the price of cheapest alcohol, which causes the greatest harm, is increased, while also ensuring that the Treasury benefitted from these increased prices rather than the alcohol companies. MUP effectively works with taxation to regulate the price of alcohol, and control its availability.

Regarding the question of being able to conclusively predict the impact of MUP, the evidence for MUP (outlined above) is very strong and far stronger than for other policies already implemented. Based on modelling and evidence from Canada, where they have similar minimum prices, we have clear evidence that MUP is and would be effective. While the Scottish court case regarding the legality of MUP is on-going, at present the Courts have accepted that it would be reasonable, based on the evidence available and the modelling, to judge that MUP may be an effective policy. On this basis they are satisfied with the policy as a relevant response to the health issue which it seeks to address. The outcome from the Scottish Court of Session hearings is due in the autumn and we are confident that MUP will be implemented in Scotland in the near future. It is worth noting that the Scottish MUP legislation includes a sunset clause. If, after 6 years there is evidence that MUP is having unintended consequences, the legislation can be repealed.

Questions 13

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No comment.

Question 14

Is there correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might be usefully considered for England and Wales?

No comment.

Contact:

²² Andreangeli, A (2016) Making markets work in the interest of public health: the case of the Alcohol (Minimum Pricing) (Scotland) Act 2012, The University of Edinburgh Law School and The Royal Society of Edinburgh

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