



HEALTH AND SPORT COMMITTEE

AGENDA

22nd Meeting, 2015 (Session 4)

Tuesday 1 September 2015

The Committee will meet at 10.15 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private. The Committee will decide whether to take item 7, a draft Stage 1 report on the Carers (Scotland) Bill in private and in private at future meetings. The Committee will also decide whether to take a NHS boards budget scrutiny draft report in private at future meetings.
2. **Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill - witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses on the Bill.
3. **Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Sheila Duffy, Chief Executive, ASH Scotland, Scottish Coalition on Tobacco (SCOT);

Professor Linda Bauld, Professor of Health Policy, University of Stirling;

Simon Clark, Director, Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST);

Andy Morrison, Trustee, New Nicotine Alliance.
4. **Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (in private):** The Committee will consider the main themes arising from the oral evidence heard earlier in the meeting.
5. **Transplantation (Authorisation of Removal of Organs etc.) (Scotland) Bill (in private):** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

6. **Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.
7. **Carers (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

Agenda Item 3

Written Submissions	HS/S4/15/22/1
PRIVATE PAPER	HS/S4/15/22/2 (P)
SPICe Briefing: The Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill	HS/S4/15/22/3

Agenda Item 5

PRIVATE PAPER	HS/S4/15/22/4 (P)
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Agenda Item 6

PRIVATE PAPER	HS/S4/15/22/5 (P)
PRIVATE PAPER	HS/S4/15/22/6 (P)

Agenda Item 7

PRIVATE PAPER	HS/S4/15/22/7 (P)
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Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**Scottish Coalition on Tobacco****Background**

SCOT - the Scottish Coalition on Tobacco - is a campaigning coalition of 15 health and medical organisations that have a shared interest in matters relating to tobacco and health. This response relates only to part 1 of the Bill, Nicotine Vapour Products and smoking in hospital grounds.

Members of the coalition are: ASH Scotland, Asthma UK Scotland, British Heart Foundation Scotland, British Lung Foundation Scotland, British Medical Association, Cancer Research UK, Chest Heart & Stroke Scotland, the Faculty of Public Health, Macmillan Cancer Support, Royal College of Nursing, The Roy Castle Lung Cancer Foundation, Royal College of Physicians of Edinburgh, Royal College of Psychiatrists, The Stroke Association (Scotland office) and the Royal Environmental Health Institute of Scotland.

This submission is a general response on behalf of the SCOT coalition. Where individual members take a different stance on particular points this will be reflected in their own submissions and individual SCOT members may submit evidence on parts 2 and 3 of the Bill.

In this submission, we make two specific asks that the Committee may wish to consider. The first relates to proposed regulations on NVP advertising, and we would like to see these go forward and include a prohibition on advertising of NVPs where the advertising can reasonably be expected to have the effect of promoting the use of lit, smoked tobacco. While recognising that the content of regulations is not currently under consideration, we believe that the commitment to having regulations would allow some existing concerns to be addressed going forward. The second is neither an NVP nor a hospital grounds issue, but we would ask that an amendment be considered to the registration provisions, to bring register banning orders more into line with practice on alcohol licensing, which has a dual system where a ban can be extended to the premises and not only applied to the registered person.

1. Do you support the Bill's provisions in relation to NVPs?

SCOT's main concern is for public health in relation to tobacco. We believe that vaping will prove to be much less harmful than smoking tobacco – but not harmless, as some supporters suggest. SCOT broadly supports the regulations being proposed for what is a fast-evolving and unpredictable market, with new products being rapidly developed and retailed.

We believe that the proposed age restrictions, ban on self-service sales through vending machines and the requirement for vendors both to register and to adopt age verification policies are sensible and proportionate responses to regulating the non-medicinal market in nicotine delivery products. Such devices have addiction potential, and could also provide new

routes to market for tobacco companies, so we believe that the protection of those under 18 is important and timely. We therefore support the prohibition of proxy purchase of NVPs for under 18's, the extension of the current banning order regime, and also the requirement for the authorisation of sale of both tobacco and NVPs by those under 18.

We support the extension of the current register to cover both tobacco and nicotine vapour product retailers. This expanded register will provide important intelligence that will allow local authorities to engage effectively with retailers, to offer them education and support, and where appropriate to deploy penalties including banning orders. We note that the existing tobacco retailers register has not imposed any significant burden on retailers but has yielded valuable information to researchers on the locations and density of retail outlets.

While the Tobacco Products Directive will shut down some forms of cross-border NVP advertising, we believe it is important that the Scottish Government takes powers as proposed to regulate domestic forms of advertising and that these regulations should ensure that permitted advertising and promotions have the primary purpose of highlighting the benefits of using NVPs to existing smokers as opposed to their continuing to use lit, smoked tobacco or maintaining long term dual use of cigarettes and NVPs. We feel it is important in considering regulations for NVP advertising to shut down the potential for tobacco companies to promote smoking tobacco as an activity in itself through promotions and marketing related to their NVP vested interests. We support the proposal for regulations and would hope that these would restrict advertising or promotions that have the effect of primarily targeting never smokers or former smokers with a view to their initiation into using NVPs. We believe particular consideration should be given to preventing marketing and promotions aimed at youth initiation. We support a more full consideration of regulations to limit the advertising and brand-sharing, free distribution, nominal pricing and sponsorship of NVPs, and we believe that the context and main driver of this consideration needs to be maintaining and strengthening Scotland's vision to create a generation free from tobacco by 2034.

2. Do you support the proposal to ban smoking in hospital grounds?

SCOT members support the principle of a journey towards smoke-free NHS estates given the vast harm that tobacco does to people's health and the associated human and financial costs associated with tobacco use. We view the current proposal as a limited extension of the principle of smoke-free enclosed public places outwards to the immediate areas around buildings where there are entrances, windows and ventilation openings that can allow SHS ingress, and we therefore expect that the definition of the boundaries will be made with reference to published peer reviewed research on secondary tobacco smoke drift around and into buildings and to air quality measurements.

We believe that the arguments around possible legislation for the wider grounds relate less to SHS exposure and more to wider concerns about litter,

fire hazards, and establishing positive smoke-free environments that support smokers to smoke less or quit and encourage young people to remain smoke-free. We believe that consultation with and support from communities affected is important in establishing such tobacco-free areas.

3. Is there anything you would add/remove/change in the Bill with regards to NVPs or smoking in hospital grounds?

Individual SCOT members differ in their organisational views regarding possible restrictions on NVP use in enclosed public spaces, and this may be reflected in their submissions.

Beyond NVPs and smoking in hospital grounds, we would note that for alcohol since legislation in 2005 a dual licensing system allows for a ban to be applied to the premises and/or to the licence holder and we would ask that the Committee consider an amendment to bring the provision for banning orders relating to the tobacco or NVP register into line with this dual provision for alcohol penalties. Surveys show that a large proportion of young people who smoke get their tobacco directly from shops (SALSUS) and there are reports that some shops are a significant outlet for illicit tobacco. Only a handful of banning orders have been imposed in relation to tobacco sales, one of which was quickly side-stepped by transferring registration, so we believe there is a need to align provision better with those provisions applied in relation to alcohol retail, and would suggest that the register make provision for a dual banning order that can apply to both the registered person and to the premises.

Scottish Coalition on Tobacco

ASH Scotland**Background**

ASH Scotland – Action on Smoking and Health (Scotland) - is the independent Scottish charity taking action to reduce the harm caused by tobacco. We seek to improve health and quality of life by limiting the number of young people taking up smoking, reducing the number of adult smokers, protecting people from second hand smoke and tackling the inequality resulting from tobacco use.

In this submission, we make two specific requests to the Committee:

- that the Committee recommends that any proposed regulations on NVP advertising should include a prohibition on advertising of NVPs where that advertising could reasonably be expected to have the effect of promoting the use of lit, smoked tobacco
- that an amendment to the registration provisions be considered, to bring register banning orders more into line with practice on alcohol licensing, which has a dual system where a ban can be extended to the premises and not only applied to the registered person.

1. Do you support the Bill's provisions in relation to NVPs?

ASH Scotland does not take a simplistic view either “for” or “against” electronic cigarettes. Our interest is in helping people improve their health by reducing the enormous harm caused by tobacco use and our approach to electronic cigarettes (and novel nicotine delivery devices generally) is guided by that principle.

We believe that ‘vaping’ will prove to be much less harmful than smoking – but not harmless, as some supporters suggest. So for a smoker to switch from tobacco to electronic cigarettes will bring significant health benefits, but the best health outcomes will still come from being free of any addictive substance.

A report¹ to UK All Party Parliamentary Groups, ‘Electronic cigarettes: what we know so far’, presented on 1st July 2015 noted that:

- e-cigarettes are much less harmful than smoking but not 100% safe
- use of e-cigarettes by never smokers remains rare in the UK and US
- use of e-cigarettes by smokers is fairly common (10-20%) but in England prevalence has not increased over the past 18 months
- the advent of e-cigarettes has not had a detectable impact on quit attempt rates
- use of NVPs in a quit attempt is associated with increased abstinence rates compared with using no aid or licensed nicotine product bought from a store or placebo (nicotine-free) e-cigarettes

- use of e-cigarettes while smoking appears to be associated with a small reduction in cigarette consumption; its effect on subsequent smoking cessation is not clear
- e-cigarettes are being strongly promoted using the full range of marketing tools, with some branding and imagery being similar to that currently or previously used for conventional cigarettes.

We believe that the proposed age restrictions, ban on self-service sales through vending machines and the requirement for vendors both to register and to adopt age verification policies are sensible and proportionate responses to regulating the non-medicinal market in nicotine delivery products. Such devices have addiction potential, and could also provide new routes to market for tobacco companies, so we believe that the protection of those under 18 is important and timely. We therefore support the prohibition of proxy purchase of NVPs for under 18's, the prohibition of sales of NVPs through self-service vending machines, the extension of the current banning order regime, and also the requirement for the authorisation of sale of both tobacco and NVPs by those under 18.

We support the extension of the current register to cover both tobacco and nicotine vapour product retailers. This expanded register will provide important intelligence that will allow local authorities to engage effectively with retailers, to offer them education and support, and where appropriate to deploy penalties including banning orders. Having a retail register would allow for immediate enforcement action against any illicit or counterfeit sales of NVPs. We note that the existing tobacco retailers register has not imposed any significant burden on retailers.

While the Tobacco Products Directive will shut down some forms of cross-border NVP advertising, we believe it is important that the Scottish Government takes powers as proposed to regulate domestic forms of advertising and that these regulations should ensure that permitted advertising and promotions have the primary purpose of highlighting the benefits of using NVPs to existing smokers as opposed to their continuing to use lit, smoked tobacco or maintaining long term dual use of cigarettes and NVPs. We feel it is important to note for any future consideration of regulations for NVP advertising to shut down the potential for tobacco companies to promote smoking tobacco as an activity in itself through promotions and marketing related to their NVP vested interests. This type of promotion is not covered by the current Tobacco Advertising and Promotion Act (2002). We support the proposal for regulations to restrict advertising or promotions that have the effect of primarily targeting never smokers or former smokers with a view to their initiation into using NVPs and believe particular consideration should be given to restricting marketing and promotions aimed at young people. We support a more full consideration of regulations to limit the advertising and brand-sharing, free distribution, nominal pricing and sponsorship of NVPs, and we believe that the context and main driver of this consideration needs to be maintaining and strengthening Scotland's vision to create a generation free from tobacco by 2034.

The report of a June 2015 international conference 'Harvesting Global Learning on ENDS'², whilst reserving judgment on the merits of e-cigs in general, warned that e-cigarettes should be considered in the context of the international public health treaty, the Framework Convention on Tobacco Control (FCTC), as they are increasingly marketed and sold by tobacco companies with implicit and explicit claims to be engaged in harm reduction. These claims do not appear to be backed by any actions or firm commitments to reduce the harm from combustible tobacco. The FCTC and subsequent guidance produced by the parties in relation to Article 5.3 clarify the need to eschew collaboration with tobacco companies and to limit contacts to those necessary to regulate the tobacco industry and its products.

Nicotine vapour products may offer the opportunity for a dramatic reduction in the consumption of combusted tobacco products. A strong legislative framework needs to be put in place to deal with a constantly evolving market in which second, third and fourth generation NVP products and other devices are being developed eg pulmonary inhalers, heated-not-burned tobacco cigarettes, etc. This legislative framework will need to take account of the extreme harmfulness of lit, smoked tobacco as well as of emerging evidence on NVPs and other devices.

2. Do you support the proposal to ban smoking in hospital grounds?

In 2014, 73% of Scottish adults (32% of smokers) agreed that smoking should be banned in hospital grounds, 15% (48% of smokers) disagreed³. We support the principle of smoke-free hospital estates and welcome the opportunity to consider the best means of achieving this goal. Ensuring that the bulk of hospital estates are smoke-free could help to support non-smoking as the norm for patients who are trying to quit smoking, as well as protect others from second-hand smoke exposure in some areas.

A systematic review of 18 studies⁴ which measured second-hand smoke (SHS) exposure in outdoor settings concluded: 'Only limited evidence is available regarding SHS exposure in outdoor settings as determined by environmental and biological markers; therefore, the existing evidence must be interpreted carefully'. However the review indicated the 'potential for high SHS exposures at some outdoor settings and indoor locations adjacent to outdoor smoking areas' and demonstrated that high smoker density, highly enclosed outdoor areas, low wind conditions, and close proximity to smokers generate higher outdoor SHS concentrations'. The review further noted that '[s]ome controversy exists regarding whether smoking should be prohibited in outdoor settings ([Chapman 2008](#); [Thomson et al. 2008](#)). **Health concerns** about SHS exposure, **nuisance from SHS, litter, fire hazards**, concern about **establishing positive smoke-free models for youth**, and **reducing youth opportunities to smoke** ([Bloch and Shopland 2000](#); [Brennan et al. 2010](#); [Cameron et al. 2010](#); [Chapman 2008](#); [Repace 2008](#); [Thomson et al. 2008](#), [2009](#)) were some of the reasons advanced for why smoke free areas should be considered in selected outdoor locations. Outdoor smoking bans **might also support smokers who are trying to quit by limiting their overall cigarette consumption** ([Williams et al. 2009](#)). Selected outdoor

smoking bans should also help to **denormalize smoking in outdoor areas** ([Thomson et al. 2008](#)). In a number of jurisdictions, **the majority of the public supports restricting smoking in various outdoors settings, and this support appears to be increasing over time** ([Thomson et al. 2009](#)).'

We believe that the direction of tobacco control in Scotland should always be moving towards being smoke-free in line with our vision for a generation free from tobacco, but if an outside area is designated smoke-free, enforcement issues would be less complex and allow more scope for sensitive approaches to vulnerable patients and visitors in difficult situations that may not warrant prosecutions. Determining a legally binding, designated smoke-free external perimeter is the next progressive step to Scotland becoming smoke-free whilst retaining a compassionate and evidence-based approach to smoking outside. We believe that consultation with and support from communities affected is important in establishing such tobacco-free areas and gaining support for keeping them smoke-free.

3. Is there anything you would add/remove/change in the Bill with regards to NVPs or smoking in hospital grounds?

We believe that more can be done to enforce existing restrictions on selling tobacco to young people and therefore support the principle that retailers selling tobacco and/or e-cigarettes equipment should be required by law to challenge the age of anyone they believe to be under the age of 25. This should help clarify the situation around such transactions and will be of benefit to responsible retailers who already work within the law. It would also be beneficial if the guidelines were accompanied by proposals to simplify the guidance around test purchasing, to make tests more like real life purchasing situations, and make it more difficult for subjects to identify them.

As noted above we support the proposal for regulations on NVP advertising and would hope that these would include a prohibition on advertising of NVPs where that advertising has the potential to promote the use of lit, smoked tobacco.

The Licensing (Scotland) Act 2005⁵ created a dual licensing system which allows for a ban to be applied to the premises and/or the licensee. ASH Scotland suggests that the Committee consider an amendment to bring the provision for banning orders relating to the tobacco or NVP register into line with this. With surveys⁶ showing a large proportion of young people who smoke get their tobacco directly from shops and reports that some shops are a significant outlet for illicit tobacco and with only a handful of banning orders having been imposed in relation to tobacco sales, one of which was quickly side-stepped by transferring registration, we feel there is a need to align provision better with those applied with penalties applied in relation to alcohol retail and would ask the Committee to consider making provision for a dual banning order that can apply to both the registered person and to the premises.

ASH Scotland

¹ West R, Hajek P, McNeill A, Brown J, Arnott D (2015) Electronic cigarettes: what we know so far. A report to UK All Party Parliamentary Groups. www.smokinginengland.info/reports/

² Harvesting Global Learning on electronic nicotine delivery systems to inform U.S. research, surveillance, and policy. June 2015.

³ All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 1064 adults. Fieldwork was undertaken between 5th to 14th March 2014 . The survey was carried out online. The figures have been weighted and are representative of all Scotland adults (aged 18+).

⁴ Sureda,X, et al. Secondhand tobacco smoke exposure in open and semi-open settings: a systematic review. Environmental Health Perspectives [online] 121(7): pp.766-773, 2013. <http://ehp.niehs.nih.gov/1205806/>

⁵ <http://www.legislation.gov.uk/asp/2005/16/contents>

⁶ ISD Scotland. Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) National Report: Smoking, drinking and drug use among 13 and 15 year olds in Scotland in 2013. 2014. Available from: <http://www.isdscotland.org/Health-Topics/Public-Health/SALSUS/Latest-Report/>

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill

Professor Linda Bauld

I am writing to provide additional evidence to inform the Committee's consideration of this Bill at stage one. My response is brief and is intended to supplement a more detailed response already submitted by Cancer Research UK and should be considered alongside CRUK's submission. In addition to my post at the University of Stirling (where I serve as Professor of Health Policy, Director of the Institute for Social Marketing and Dean of Research) I also hold the CRUK/BUPA Chair in Behavioural Research for Cancer Prevention. This latter role (as CRUK's 'Cancer Prevention Champion') involves leading the charity's work on the primary prevention of cancer. Tobacco use is the leading preventable cause of cancer and the main focus of my own research.

In addition, I thought it would be helpful to make two additional points. The first is that the Bill does not include any proposed national measures to ban e-cigarette use in enclosed public places or on NHS grounds. I believe this is the right decision as we simply do not have evidence of health harms to bystanders from e-cigarette vapour which would justify such measures. I understand some organisations would like to see these types of restrictions added to the Bill but I do not agree with that view. Should the committee wish, I can speak to the evidence on 'second hand' vapour at the meeting if useful.

On a second point, to supplement the CRUK submission I attach a short article which has been accepted for publication in the journal *Nicotine and Tobacco Research* and provides a concise overview of the current situation with use of e-cigarettes amongst young people in the UK, including Scotland. Although regular use is rare, I believe the findings support the need for age of sale, proxy purchase and vending machine legislation as the Bill proposes.

Professor Linda Bauld

**E-cigarette uptake amongst UK youth: experimentation, but
little or no regular use in non smokers**

Journal:	<i>Nicotine & Tobacco Research</i>
Manuscript ID:	Draft
Manuscript Type:	Letters
Date Submitted by the Author:	n/a
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E-cigarette uptake amongst UK youth: experimentation, but little or no regular use in non smokers

Electronic cigarette use is now common in many countries, particularly in the developed world. Even in countries that don't permit the sale of nicotine containing e-cigarettes, use has risen in recent years¹. Along with this has come a rise in concern about uptake amongst young people, particularly in jurisdictions where youth tobacco smoking rates have fallen to low levels. The reasons for this concern are many and varied, but some of this relates to a perception that e-cigarettes may result in a new generation of adults who are dependent on nicotine². To date we have identified at least twenty four published, peer reviewed journal articles on e-cigarette use in youth, with at least as many again published survey reports. The majority of these only describe recent or ever use of these products and don't differentiate experimentation from regular use³. An exception is in studies from the countries of the United Kingdom, where four recent surveys conducted in a 12 month period from 2013 to 2014 shed some light on ever and regular use amongst smoking and non-smoking young people. Figure 1 summarises results from these four surveys, each of which has yielded very similar findings.

INSERT FIGURE 1

What these surveys show is that a significant proportion of teenagers have tried e-cigarettes – 8% in one survey across Great Britain⁴, and 12% in a representative UK-wide survey and national surveys in Wales⁵ and Scotland⁶. A very small proportion (ranging from 0.4% in Scotland to 2% in the UK survey) report use more than monthly and even fewer (1% in the UK and 0.7% in Great Britain respectively) more than weekly. On closer examination, however, this more regular use is found only in young people who have also smoked tobacco. Three of these surveys found no evidence at all of never smoking young people regularly using e-cigarettes. The fourth, a large survey in Wales of 9,055 11-16 year olds, identified 54 never smoking young people who reported using e-cigarettes at least monthly. Rates of experimentation (or ever use) in never smoking young people were also low in all surveys, from 2-5%.

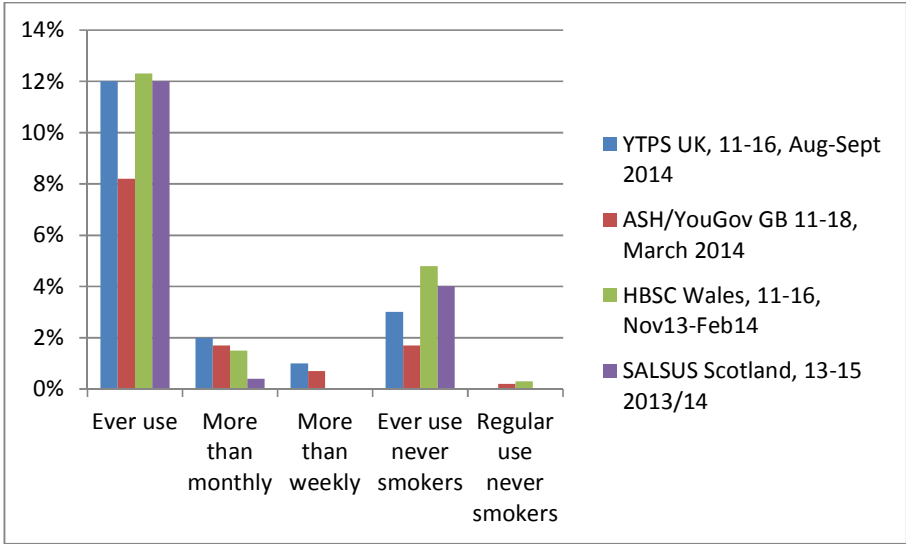
What do these data tell us? They suggest that at the moment, regular use of e-cigarettes is almost entirely concentrated in young people who already smoke. Never smokers are trying these devices (which may or may not contain nicotine – the surveys did not ask this) but not progressing to habitual use. Given the size, representativeness and similar time period in which these studies were conducted, we can be relatively confident that they accurately capture the situation in a country that has at least 2.6 million adults who use e-cigarettes, and 10 million who smoke⁷. It is imperative that future studies of e-cigarettes and young people differentiate different patterns of consumption and do not use evidence of ever use as a proxy for continued use. Teenagers experiment, and for some smoking teenagers, e-cigarettes may well be a route out of tobacco. Surveillance of the kind reported here is important in order to capture new and emerging trends and inform policy and practice.

References

1. Adkison SE, O'Connor R J, Bansal-Travers M, et al. Electronic nicotine delivery systems: international tobacco control four-country survey. *Am J Prev Med.* 2013;44(3):207-215.
2. Grana RA. Electronic cigarettes: a new nicotine gateway. *J Adolesc Health.* 2013;52(2):135-136.

3. Dutra LM, Glantz SA (2014). Electronic cigarettes and conventional cigarette use among US adolescents: a cross-sectional study. *JAMA Pediatrics*. 2014;168(7):610-617.
4. Eastwood, B., Dockrell, M., Arnott, D., Britton, J., Cheeseman, H., Jarvis, ML. & McNeill, A. Electronic cigarette use in young people in Great Britain 2013-2014. Manuscript submitted for publication to the *Journal of Public Health*. 2015.
5. Moore G, Hewitt G, Evans J, et al. Electronic cigarette use among young people in Wales: evidence from two cross-sectional surveys. *BMJ Open*. 2015;5:e007072. doi:10.1136/bmjopen-2014-007072.
6. ISD Scotland. Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS), Smoking among 13 and 15 year olds in Scotland 2013. 2014. <http://www.isdscotland.org/Health-Topics/Public-Health/SALSUS/Latest-Report/>
7. ASH. Electronic cigarette use among smokers slows as perceptions of harm increase. 2015. <http://www.ash.org.uk/media-room/press-releases/:electronic-cigarette-use-among-smokers-slows-as-perceptions-of-harm-increase>

Figure 1: Prevalence of e-cigarette use in teenagers, UK surveys



Notes:

- (1) Youth Tobacco Policy Survey, UK, n=1205
- (2) ASH/YouGov survey n=1731 children who had heard of e-cigarettes
- (3) Health Behaviour in School Children in Wales, n= 9,055
- (4) Scottish Schools Adolescent Lifestyle and Substance Use Survey, n=33,685

Health (Tobacco, Nicotine etc. and Care)(Scotland) Bill**FOREST**

“The Bill will introduce restrictions on the sale of nicotine vapour products (NVPs) such as e-cigarettes and shisha pipes. These restrictions will include; a minimum purchase age of 18, prohibiting the sale of NVPs via vending machines, requiring NVP retailers to register on the tobacco retailer register, prohibit ‘proxy-purchasing’ for under 18s, restrict domestic advertising and promotions, implement an age verification policy for the sale of NVPs and ban staff under the age of 18 from selling tobacco and NVPs. The Bill would also make it an offence to smoke in parts of hospital grounds.”

Declaration of interest – FOREST (Freedom Organisation for the Right to Enjoy Smoking Tobacco) was founded in 1979 to represent adults who choose to consume tobacco in full knowledge of the health risks associated with tobacco products. We also represent non-smoking adults who are tolerant of other people's enjoyment of tobacco.

FOREST's purpose is to protect the interests of adults who choose to smoke or consume tobacco and highlight the increasingly intrusive nature of government in the lives of private individuals. More recently we have launched a new campaign, Action on Consumer Choice, that represents the interests of consumers who choose to use nicotine vapour products including electronic cigarettes.

FOREST receives donations from British American Tobacco, Imperial Tobacco Limited, Gallaher Limited (part of the Japan Tobacco Group of Companies). However the views expressed in this submission or any Forest-associated website or publication are those of Forest alone.

Our primary interest in this Bill is the intention to “make it an offence to smoke in parts of hospital grounds”. However, as many smokers use e-cigarettes, we have also commented on some of the proposed restrictions on the sale of nicotine vapour products.

1. Smoking in hospital grounds

- 1.1 FOREST understands why the Scottish Government does not want the NHS to appear to encourage or condone smoking. Nevertheless we cannot support that part of the Bill that discriminates against smokers by making it an offence to smoke in hospital grounds.
- 1.2 A comprehensive ban is completely disproportionate to the problem. Some people may not like the smell of tobacco smoke but it is massively diluted in the open air and the level of exposure is likely to be counted in seconds.
- 1.3 When people light up they must of course smoke with consideration for those around them – and move to a quieter, less populated part of the

grounds when appropriate – but smoking outside in a wide open space should not inconvenience anyone unduly, if at all.

- 1.4 Significantly there is NO evidence that smoking outside is a health risk to anyone other than the smoker. Interviewed recently on BBC Radio Manchester, Andrea Crossfield, CEO of Tobacco Free Futures (formerly Smokefree North West), stated there is "no risk from second-hand smoke in outdoor areas".
- 1.5 Banning smoking in hospital grounds is particularly cruel. Some patients may be in hospital for weeks or even months. If they are long-term smokers it is wrong not to allow them to smoke anywhere in the grounds. The size and location of hospital grounds can vary enormously so it should be left to individual hospitals to decide on a policy rather than having a national one-size-fits-all measure forced upon them.
- 1.6 A comprehensive ban on smoking on NHS hospital grounds will send quite the wrong message about our 'caring' NHS. There's nothing caring about ordering people to walk several hundred yards before they can light up. It could be dark, late at night, or raining. It will almost certainly be next to a busy main road. Why treat anyone like that, especially people who are already suffering from ill health or are recovering from an accident or serious operation?
- 1.7 It may be unsightly if people are smoking outside the main entrance to a hospital but this is one of many unintended consequences of the workplace smoking ban. Unable to smoke indoors in a separate, well-ventilated smoking room, smokers have to stand outside. Inevitably they choose to stand by entrances and doors where there may be some shelter from the elements.
- 1.8 The answer to this issue is not a total ban on smoking in hospital grounds, forcing smokers off the premises with threats of fines. Options include allowing smokers to light up outside without restriction; allowing smokers to light up away from hospital entrances; or installing a well signposted shelter where patients, visitors and staff can light up in some degree of comfort throughout the year.
- 1.9 Even in these difficult financial times a smoking shelter represents money well spent. After all, what's the alternative? Enforcing an outdoor smoking ban means CCTV cameras, public address systems and tobacco control wardens ordering smokers to "Put that cigarette out!".
- 1.10 Enforcing a smoking ban is a waste of public money and hospital resources.¹ According to a recent national poll by Populus for Forest, tackling smoking was considered the lowest in a list of priorities for the NHS, behind even obesity and alcohol issues. The most important issues were investing in new doctors and nurses, addressing response times at A&E, and improving general waiting times.²

- 1.11 How will a smoking ban on hospital grounds be enforced? Will hospitals use tobacco control wardens and CCTV cameras? Who will monitor the latter? What happens if a smoker refuses to extinguish his or her cigarette? Will he or she be forcibly ejected from the grounds, even if they are a patient? Will the hospital call the police? Have the police nothing better to do? What sort of society makes smoking in the open air a criminal offence?
- 1.12 Managers say the NHS in Scotland, England and Wales spends £2.7 billion a year treating smoking-related health problems. To put this estimate in perspective, smokers throughout the UK contribute over £10 billion annually through tobacco taxation. If you contribute that amount to public funds you don't deserve to be treated in such a cold-hearted manner.
- 1.13 The NHS has a duty of care to protect people's health but that doesn't include the right to nag, cajole or bully smokers to quit. Many smokers are in hospital for reasons that have nothing to do with smoking. Why should they be told they cannot go outside and have a cigarette in the open air?
- 1.14 It's heartless to ban patients or staff from smoking anywhere on hospital grounds. Tobacco is a legal product and many people smoke to relieve stress. A cigarette break at work or while they are in hospital is something many people look forward to. For some patients may be one of the few pleasures they have while in hospital.
- 1.15 Driving the proposal to make smoking in hospital grounds an offence is a degree of bullying that is unacceptable in a tolerant society. People are no longer educated about the health risks of smoking. Today they are patronised, insulted, made to feel like lepers or, worse, threatened with prosecution and fines. The public health industry is engaged in a campaign of creeping prohibition. Banning smoking in the open air, even in hospital grounds, is a step too far.
- 1.16 *Potential consequences of a ban on smoking in hospital grounds*
In June 2007 the Daily Telegraph reported:
- A trainee accountant obsessed with serial killers has been found guilty of murdering a nurse as she took a cigarette break. Cheryl Moss, 33, was stabbed and slashed 72 times as she stood in parkland at the back of St George's hospital, Hornchurch, Essex, in April, last year.³
- 1.17 Although this was a tragic and isolated incident, can we sure it will never happen again? Had it not been for a ban on smoking in the grounds of St George's Hospital, Cheryl Moss would probably be alive today. The NHS has a duty of care to all its patients and staff. Why put anyone at risk unnecessarily by banning smoking across all NHS sites and forcing smokers off the grounds? The risk to patients, visitors and staff may be small but it is a risk nonetheless.

- 1.18 On April 12, 2015, I wrote that I had taken a phone call from the daughter of a 68-year-old woman who had been admitted to an NHS-run psychiatric hospital in Scotland:

Her mother is a smoker, suffers from dementia, and is currently in a psychiatric hospital waiting to be moved to a care home where there's a smoking room. She's been told it could take eight or nine months for a place to become available.

The mother was admitted in January and things were OK until the new rules prohibited her from smoking in the hospital grounds. Before that members of staff were allowed to take her outside so she could light up. Now they've been told they can't and it's not safe for her to go out unaccompanied.

According to her daughter her mother is going downhill rapidly. Consultants and nurses are said to be sympathetic but say their hands are tied by the regulations.

When we spoke the daughter was distressed by her mother's predicament and occasionally tearful. I promised her Forest's support and we'll do what we can, but I'm pessimistic. The 'caring' profession is nothing of the sort. All they care about is their wretched no smoking policy that must be obeyed at all cost.

Common sense and decency are sacrificed on the altar of public health. What's happening is inhumane yet no-one is willing to do anything about it.⁴

- 1.19 By all means restrict smoking in the area around entrances to hospitals, but making it an offence to smoke on the entire site is unreasonable and excessive. It is the firmly held opinion of FOREST that banning smoking on the entire site of any NHS hospital, psychiatric or otherwise, is inhumane and demonstrates a staggering lack of empathy for patients, staff and visitors who take pleasure from smoking or find it a comfort in stressful times.
- 1.20 Even worse, perhaps, is the appalling threat to make it an offence for hospital staff to permit others to smoke outside hospital buildings. In theory, this part of the legislation could result in a member of staff, with many years of dedicated service behind them, being prosecuted simply because, with the best of intentions, they turned a blind eye to a patient who wanted to smoke outside, a patient whose immediate well-being could be helped by a quiet smoke in the hospital grounds.
- 1.21 Over the years there have been many anecdotal examples of staff taking patients who want to smoke outside so they can light up. How dreadful if this Bill was to lead to the prosecution of a dedicated doctor or nurse, not to mention the catastrophic impact that may have on their career.

2. Nicotine vapour products

- 2.1 There is no evidence e-cigarettes are harmful (beyond satisfying a desire for nicotine which is no more harmful than caffeine). There is also very little evidence that non-smokers, including children, are using e-cigarettes as a gateway to tobacco.
- 2.2 Vapers are almost exclusively smokers who wish to cut down or quit or are looking for an alternative nicotine delivery system in places where smoking is banned. It therefore makes no sense to unnecessarily restrict their sale or promotion.
- 2.3 *Minimum purchase age of 18*
In our response to the Electronic Cigarettes and Strengthening Tobacco Control in Scotland consultation (January 2015) we agreed that the minimum age of sale for e-cigarette devices be set at 18. Now, eight months later, we're undecided. Existing evidence suggests that e-cigarettes are harmless in comparison to combustible cigarettes. Existing evidence also suggests e-cigarettes are not a gateway to tobacco products. If the primary aim is to discourage children from smoking combustible cigarettes it makes little sense to prohibit the sale of e-cigarettes to teenagers, especially those aged 16 or 17. Setting the minimum age of sale for e-cigarette devices at 16 rather than 18 would set a marker. It would (a) distinguish between two very different nicotine delivery systems; and (b) nudge 16 and 17-year-olds away from a potentially more harmful product.
- 2.4 *Requiring NVP retailers to register on the tobacco retailer register*
Electronic cigarettes do not contain tobacco and using them is not smoking so there is no reason for retailers selling e-cigarettes to register on the Scottish Tobacco Retailers Register. With regard to offences and penalties, while the health risks associated with smoking are well known, there is no evidence of harm to the consumer as a result of using e-cigarettes. It is essential that any penalties take this into account because they must be proportionate to the offence.
- 2.5 *Prohibit 'proxy-purchasing' for under 18s*
FOREST supports a ban on the proxy-purchasing of cigarettes and other combustible tobacco products. However we do not support a ban on the proxy-purchasing of e-cigarettes, especially for those aged 16 or 17. If, for example, a parent discovers his or her child is smoking combustible cigarettes, why should they be prosecuted for purchasing an e-cigarette for their child in the hope they will switch from smoking to vaping? The Bill as it stands could result in the prosecution of parents who are only trying to do their best for their child. There is no evidence that by proxy-purchasing an e-cigarette for a 16 or 17-year-old child they are putting that child's health at risk, nor is there evidence that vaping will lead to smoking.
- 2.6 *Implement an age verification policy for the sale of NVPs*
In the eyes of the law it is generally accepted that children are adults

from the age of 18. Despite this it is legal to have sex at 16, join the army and drive a car at 17. In Scotland children can also vote at 16. Given this, we believe that setting age verification for the sale of e-cigarettes to 25 is excessive and unnecessary; 21 is a more reasonable age. After all, why place unnecessary restrictions in the way of purchasing or selling a product that evidence suggests is significantly less harmful than combustible cigarettes?

2.7 *Ban staff under the age of 18 from selling tobacco and NVPs*

We accept there may be a case to prohibit staff under the age of 18 from selling combustible tobacco products but why ban staff under the age of 18 from selling e-cigarettes? If the Scottish Government genuinely believes in sensible harm reduction policies it would seek to distinguish between potentially harmful combustible tobacco products and e-cigarettes. Any sensible government would seek to nudge smokers towards a less harmful alternative to combustible tobacco. Putting unnecessary obstacles in the way of people (predominantly smokers) purchasing e-cigarettes doesn't make sense.

2.8 *Restrict domestic advertising and promotions*

Excessive regulation on advertising and promotion will compromise the ability of businesses to market and sell a product that could have a significant impact on public health if it helps smokers switch from combustible products to electronic cigarettes and other harm reduction NVP products that have yet to be invented. This in turn will have an impact on those consumers who wish to quit smoking and want to use a product that mimics the act of smoking without burning tobacco.

2.9 'New rules on the advertising of e-cigarettes', a joint regulatory statement by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) came into force on 10 November 2014. "The rules add to those already in place, which ensure advertisements for e-cigarettes must not mislead, harm, offend or otherwise be socially irresponsible." Enforcement of the rules is a matter for the Advertising Standards Authority. We believe the Scottish Government should be guided by the new rules and should wait until B/CAP has conducted a formal review of the effect of the rules (after November 2015) before implementing its own legislation on this issue.

2.10 *Prohibiting the sale of NVPs via vending machines*

Given the lack of evidence that the use of electronic cigarettes is harmful to the user, and the significant uptake in vaping among smokers, many of whom are using the product in an attempt to cut down or quit smoking, it would be counterproductive to the stated aims of tobacco control to restrict the purchase of e-cigarettes. We therefore oppose the prohibition of the sale of e-cigarettes in vending machines.

3.0 Conclusion

- 3.1 In the past decade in Scotland smoking has been banned in all enclosed 'public' places, including every pub and private members' club in the country. Graphic health warnings have been introduced on cigarette packets. Tobacco vending machines and the display of tobacco in shops have been prohibited.
- 3.2 Next year the UK will introduce standardized packaging of tobacco. At the same time the EU's revised Tobacco Products Directive will be enforced, meaning larger health warnings on cigarette packs. Enough is enough. Adult smokers know the health risks of smoking. If a smoker lights up in the open air, in hospital grounds or anywhere else, he or she is not endangering anyone else's health apart, perhaps, from their own.
- 3.3 Hospitals can be stressful places at the best of times. Prohibiting smoking in hospital grounds is excessive and will be almost impossible to enforce without spending a considerable sum of public money.^{5, 6}
- 3.4 FOREST supports consumer choice and evidence-based policy. To restrict unduly the sale and marketing of e-cigarettes in the unsubstantiated belief that the use of e-cigarettes 'normalises' smoking is self-defeating and immature. It ignores the significant fact that the success of e-cigarettes compared to other smoking cessation aids is due largely to the fact that vaping mimics the physical act of smoking. This is crucial because it's the principal reason why many smokers find electronic cigarettes a more effective and appealing smoking cessation aid than nicotine patches or other forms of nicotine therapy. Without that USP it's highly unlikely that e-cigarettes would have been so popular so quickly.
- 3.5 Most vapers are existing or ex-smokers, many of whom are using the products as a means to quit smoking. If the Scottish Government is genuinely interested in harm reduction it would encourage more smokers to switch to e-cigarettes. Excessive regulations on advertising and promotion will undoubtedly stop or reduce the rate at which that is currently happening. The inability to effectively market their products will also impact on the development by manufacturers of new and better e-cigarettes in the future.
- 3.6 The e-cigarette is a market-led product that has the potential to revolutionise public health if it is not strangled in its infancy by hyper-regulation and unnecessary restrictions. Based on existing evidence there is no reason to believe that e-cigarettes are a serious risk to the health of the consumer or that vaping is a gateway to smoking tobacco.
- 3.7 Politicians must overcome their unwarranted fear of nicotine (which can be addictive but is no more harmful than caffeine) and embrace the potential that electronic cigarettes have to become a game-changing harm reduction product that could eventually wean millions of smokers

off cigarettes and encourage fewer teenagers to start smoking. To do that requires a leap of imagination and the ability to reject unnecessarily restrictive legislation.

Forest

References

¹ [Group says enforcing smoke-free zones at hospitals would be a 'complete waste of money'](#), The Courier, April 21, 2015

² [Poll: Public believe tackling obesity and alcohol abuse more important than further anti-smoking measures](#), June 9, 2015

³ [Loner guilty of stabbing nurse 72 times](#), Daily Telegraph, June 28, 2007

⁴ [Commonsense and decency sacrificed on the altar of public health](#), Taking Liberties blog, April 12, 2015

⁵ [Hospitals' cigarettes ban goes up in smoke](#), The Courier, April 20, 2015

⁶ [Hospitals bring in more staff to tackle smoking](#), Edinburgh Evening News, April 8, 2015

Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill**New Nicotine Alliance**

In respect of Part 1, section 6A (1), from previous communication with the Scottish Government (letter dated 30 June 2015 REF 2015/0019367) NNA understands that:

“It is not the intent of the Scottish Government to criminalise responsible parents by introducing the offence of proxy purchase. Since young people over the age of 12 can be prescribed Nicotine Replacement Therapy (NRT), which is available free on prescription, a parent concerned about their child’s use of tobacco, should consult medical advice on treatment options. The offence of proxy purchase is equally likely where a stranger purchases a e-cigarette on behalf of an under 18, under these circumstances it is unlikely that they will have the young person’s best interest at heart. The proposal in the Bill is necessary to protect young people in such circumstances and it also strengthens the proposals on age restriction by reducing a young person’s likelihood of access.”

On this basis, NNA support this part of the Bill.

In respect of Part 1, section 8 (1), from previous communication with the Scottish Government (letter dated 30 June 2015 REF 2015/0019367) NNA understands that:

“the Scottish Government will consider whether it would be viable for the outward facing aspect of the register to provide a degree of separation between the products.”

On this basis, NNA support this part of the Bill.

In respect of Part 1, section 17, NNA have the following comments and concerns on advertising bans, which go further than the requirements in the current EU directive:

1. An advertising ban on these products only serves offer protection to the tobacco trade. We would contend that responsible advertising would serve to promote the idea of switching away from lethal tobacco products to a much safer option.
2. The ban on advertising Tobacco Products is justified on the back of thousands of deaths annually, but no such justification exists for electronic cigarettes.
3. A ban on electronic cigarette advertising would send the wrong message to consumers and potential switchers that electronic cigarettes are just as harmful as combusted tobacco products. This also further conflates these 95-99% safer products with extremely dangerous tobacco products.
4. Electronic cigarette advertising should be seen as advertising which promotes a much safer product which is in direct competition with a much more dangerous product (tobacco) and which the Scottish Government will not have to pay for. Positive advertising and promotion of electronic

cigarettes can only serve to help the Scottish Government reach its goal of a smoke-free Scotland by 2034.

5. There are already strong CAP codes in place for the advertising of electronic cigarettes in the UK on a par with alcohol advertising. There is no justification for stronger provisions to be applied.

NNA believes that the Scottish Government should lead the way in regulating the use of these disruptive products in a manner that will see them flourish and allow them to continue to be the biggest weapon against the harm of combusted tobacco. The evidence is clear that these products are 95-99% safer than the current incumbent of nicotine delivery. To over-regulate these products would be a massive public health loss.

NNA would respectfully request to be considered for inclusion as one of the organisations to give oral evidence in September.

New Nicotine Alliance

NNA (UK) is a registered charity founded by a group of individuals who - by themselves and through their links with leading smoking and tobacco researchers and policy analysts – have contributed over recent years to improving individual, organisational and public understanding of *'tobacco harm reduction'* - reducing harm from cigarette smoking, without necessarily giving up the use of nicotine.

The Board of NNA, along with our Associates, include ex-smokers, most of whom have succeeded in giving up smoking through the use of other nicotine delivery systems, public health analysts and scientists.

NNA (UK) is funded by donations from private individuals and organisations and is completely independent of commercial interests in relevant industries (e-cigarettes, tobacco, pharmaceutical companies, etc). It operates on a not-for-profit basis and is free from commercial bias. Our independence from commercial conflicts of interest is of paramount importance.

In all its activities NNA (UK) is non-party political and no activities are to the benefit of, or in support to any political party, and all policies and public statements are evidence-based, with a clear focus on the health of consumers and the wider public.

Agenda item 7		HS/S4/15/22/ 7
1 September		

HEALTH AND SPORT COMMITTEE

**22ND MEETING, 2015 (SESSION 4), TUESDAY 1 SEPTEMBER
2015**

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

Purpose

The purpose of this paper is to provide a summary of responses to the Committee's call for written views on the Alcohol (Licensing, Public Health and Criminal Justice) Scotland Bill. The call for written views ran from 14 May 2015 to 24 June 2014. Fifty-four responses were received.

The Bill contains ten main strands of activity. The views of respondents are summarised in relation to each strand. Data indicating whether a proposal is generally supported or not are also provided.

Note that this paper provides a high level summary only. It therefore does not reflect in detail the views of every respondent.

Usman Waheed and Abigail Bremner

SPICe Research

28 August 2015

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.scottish.parliament.uk

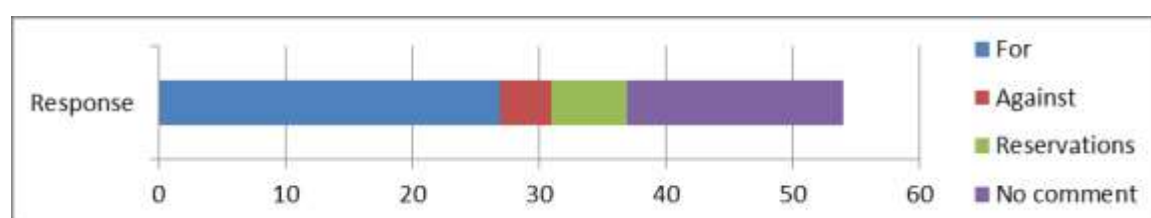
ALCOHOL BILL SUMMARY OF EVIDENCE

General Comments

Most licensing and industry organisations – and a few third sector organisations- made reference to this being potentially the sixth piece of legislation governing licensing in Scotland. In view of the increasing complexity, many have called for consolidation and clarification of the regulations in this area.

Most organisations recognised that there will be start up and maintenance costs associated with the new provisions. Enforcement was recognised by licensing bodies as a key area where costs would be incurred.

Minimum pricing provisions



Those who supported the provision – mainly health bodies, charities and licensing bodies- commended it as it seems to closes a loophole left in by previous legislation thereby removing an incentive to bulk-buy larger packs of alcohol which are available at a discounted rate.

Some respondents highlighted that the Bill was not going far enough and all discounting should be banned or at least restricted to 5% of the total display (Alcohol Focus Scotland & Scottish Health Action on Alcohol Problems).

Affordability has also been raised as an issue by some; Scottish Families Affected by Alcohol and Drugs particularly noting that the recommended guidelines for alcohol consumption for a week can be purchased for less than £5. Morrisons Supermarket also recognised that the provision will have negligible impact on sales of low cost alcohol. Minimum unit pricing has been suggested as better way of handling this issue¹ as is a ban on sale of bulk products².

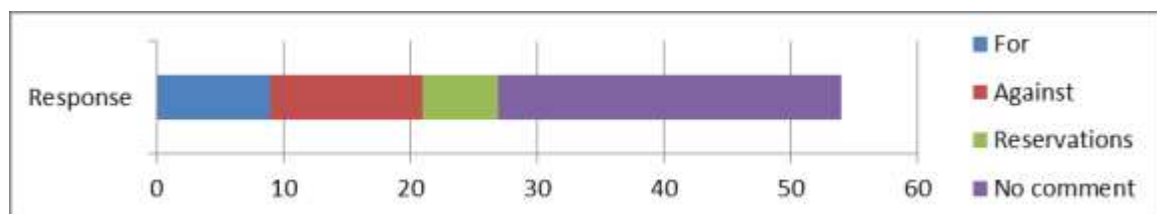
There were, however, concerns presented – particularly by the Law Society of Scotland - that the provision's wording would not achieve the desired outcome. It is suggested that it could be easily circumvented by retailers not stocking smaller multipacks. It has also been noted that the provision fails to cover packaged products containing non-alcoholic goods thereby providing another way to circumvent its intention. The risk that retailers would only stock larger multipacks has also been highlighted by several respondents.

¹ BMA Scotland

² Alcohol Public Health Specialists Group

The Scottish Wholesalers Association, the Wine and Spirit Trade Association and Scottish Retail Consortium presented particular objections to this provision. They suggest that the provision would create a culture of selling at minimum unit prices. They argue this is undesirable and will disrupt the Scottish wholesale market as consumers and retailers will source goods from outside Scotland.

Alcoholic drinks containing caffeine



Those who supported the provision did so on the assumption that such drinks are often associated with street drinking and, it is argued, have a disproportionately high level of hazardous behaviour compared with their proportion of total alcohol sales³. Youth Link Scotland in particular believed that the provision would reduce the number of related incidents. It also argued that it would have a positive impact on the image of young people, who are often associated with such drinks and “ned” culture.

Some respondents did not consider this provision necessary or useful since new kinds of dinks may develop, sales of alcohol and caffeine in separate packaging will continue and people may be encouraged to mix their own alcoholic drinks with caffeine. They also noted that this is not a priority and focus should be on overall reduced consumption, publicity and education. Such reservations were noted by health bodies, licensing bodies and industry bodies alike.

The Scottish Grocers’ Federation and the Association of Convenience Stores, strongly objected to this provision. They note that such drinks comprise less than 1% of total sales. Other respondents state that there is insufficient evidence to justify this provision, arguing instead that alternate measures ought to be used to tackle the issue⁴.

Some respondents from Aberdeen and the Outer Hebrides made no comment, highlighting a lack of direct evidence that “Buckfast” type drinks are the cause of problems in their respective local areas. Several health bodies, including NHS Scotland, noted that there is insufficient evidence to support the provision, but suggested monitoring with the possibility of legislating in the future.

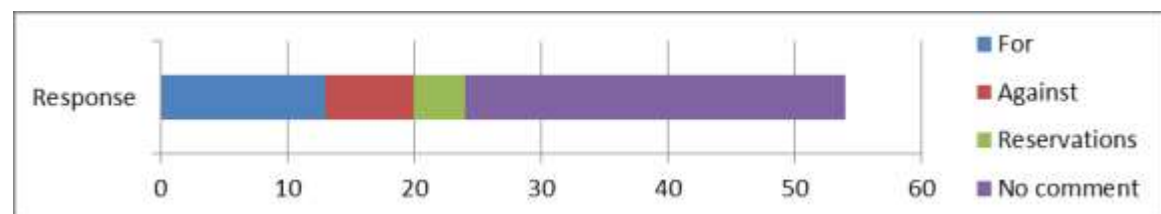
Concerns were presented over the definition of “caffeine”. The Law Society of Scotland raised some technical issues. In particular, the amount of caffeine

³ Alcohol Focus Scotland

⁴ Midlothian Council and The Midlothian and East Lothian Drugs and Alcohol Partnership (MELDAP) present similar objections

required for a product to be banned is not prescribed in the Bill, so manufacturers will not know whether their products are affected. The Law Society suggests that the definition should appear in primary legislation. They also raise the possibility of conflict with EU law as the Bill could be seen as creating new technical barriers. Additionally they note that EC must be notified as new technical regulations are being contemplated.

Off sales age discrimination



Some respondents favoured this provision because it would remove discrimination⁵, promote equality⁶ and recognises that youth problem drinking is improving⁷. East Renfrewshire Licensing Forum noted that introduction of this provision would ensure that responsible drinkers are not adversely affected by use of the powers licensing boards currently possess.

Some licensing bodies commented that they would like the flexibility to respond to local issues by imposing age restriction in appropriate circumstances⁸. Several health bodies and charities also supported such a view⁹.

The Law Society of Scotland questioned whether there was any evidence that the power currently held by licensing boards in this regard had been abused¹⁰. They also question whether such a measure would meet licensing boards' obligations in terms of the Equality Act 2010.

South Ayrshire Alcohol and Drug Partnership and NHS Ayrshire and Arran highlighted the possibility of increasing the national minimum age to 21.

⁵ West Lothian Council

⁶ Youth Link Scotland, Central Aberdeenshire Licensing Board

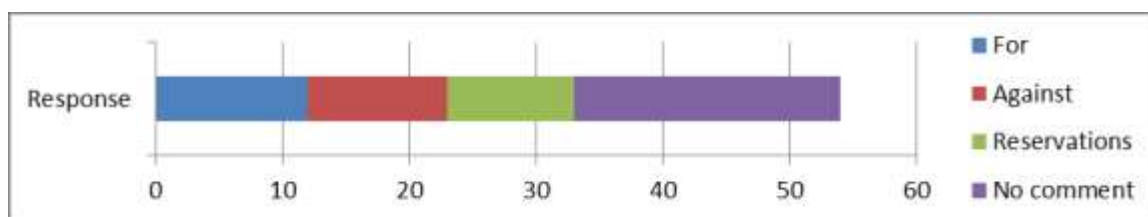
⁷ Wines and Spirit Trade Association and Scottish Retail Consortium.

⁸ Renfrewshire Licensing Board, Shetland Licensing Forum, East Lothian Licensing Forum

⁹ NHS Scotland, Alcohol Focus Scotland, Scottish Health Action on Alcohol Problems, Borders Drug and Alcohol Partnership, The Salvation Army

¹⁰ Aberdeenshire Council Environmental Health Service and The Scotch Whisky Association also question this.

Container marking: off-sales



West Lothian Council supported the provision subject to consideration of the financial burden it would impose. They questioned the assumption in the Bill that provision of equipment for marking bottles should be the responsibility of the licensing board. They noted that the cost of complying with licensing conditions was usually a matter for the licence holder.

Youth Link supported the provisions on the understanding that retailers would become more accountable. Others offered support on the basis that this would allow police to tackle local issues and because they have already seen positive results through pilots in their local areas (Central Aberdeenshire, South Ayrshire, North Ayrshire, see also Alcohol Public Health Specialists Group).

A key theme which was evident throughout the responses was the uncertainty as to how the scheme would work in practice. There were questions around likely effectiveness and cost-effectiveness – especially regarding how the bottles would be marked.

A lot of concern was also expressed – even by those who supported the provision – over retailers being unfairly punished and penalised over marked bottles found in the possession of under-age drinkers. It was noted that these may have been obtained through proxy buying (usually by family or friends) or theft¹¹. Such concerns were expressed by respondents with a trade, health and licensing background.

Proxy buying was seen as the key underlying issue by most respondents. It was noted that container-marking would not tackle this problem.

Respondents also highlighted problems created by the rules of evidence. The Scotch Whisky Association suggested that CCTV would be needed to confirm the sale actually did take place to someone underage before such marked bottles could be used as evidence.

Concerns about the process were also raised, such as the difficulty of rebutting police intelligence and a lack of an appeals procedure. The police would be responsible for applying to a licensing board to instigate a bottle tagging requirement.

Cost was a major concern. The Scottish Beer and Pub Association highlighted significant cost to suppliers if retailers refused to stock products unless

¹¹ NHS Orkney

already marked. A number of industry organisations also suggested that container marking would have to be done using UV pens since stickers would damage the aesthetics of the product.

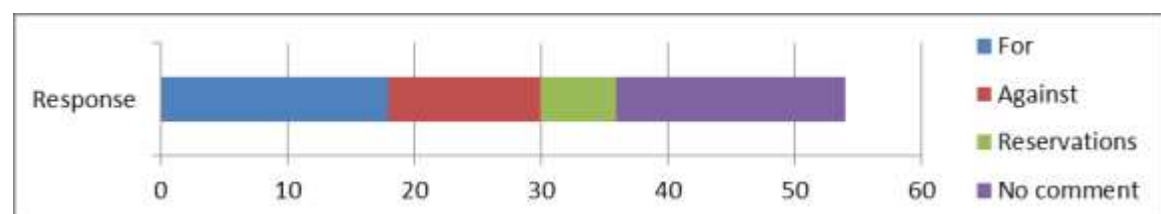
Morrisons Supermarket has presented an account of the costs associated with complying with the bottle marking scheme. They estimate that it would cost £3.3million to comply. This included an estimate that they would require at least 2.5 full time equivalent new staff in each store working only on marking bottles.

Morrisons also has serious concerns about the effectiveness of this expenditure. It argued that the potential for proxy sales, and other ways of obtaining alcohol, would in effect hold the scheme redundant.

Several respondents, predominantly Midlothian Council, raised the issue of enforcement burden which would likely fall on Licensing Standards Officers and the police. A few respondents have called for more pilot studies before any action is taken.¹² Officers of Aberdeen City Licensing Board commented that, if introduced, container marking should be done on a national basis rather than through the “piecemeal process” contained in the Bill.

The Law Society of Scotland has also made several comments. In particular, it notes that the manner in which the provision holds licensing boards accountable to the police for decisions not to implement container marking schemes is highly unorthodox.

Licence Applications and Variations



West Lothian Council and a few other respondents – mostly health bodies, Alcohol and Drug Partnerships and licensing forums- recognised the potential for strengthened community involvement and supported the provision. Youth Link further suggested that involvement of children and young people should be considered.

A few respondents noted that the licensing process needs to be made more accessible to local people by making it simpler and removing jargon¹³. The need to remove complexity and the recurrent theme of consolidation is apparent in the responses.

Most licensing boards highlighted the increased resource burden and time taken to process applications. Whilst some found the delay and the burden

¹² Alcohol Focus Scotland

¹³ Alcohol Focus Scotland, Scottish Families Affected by Alcohol and Drugs

unacceptable¹⁴, others welcomed it in favour of increased community involvement¹⁵.

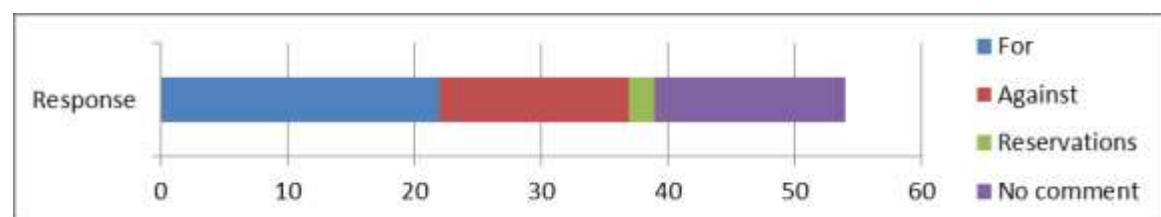
Some respondents highlighted the potential for confusion, This is because it is not always known how active a community council is, so it may be difficult to determine which neighbour notification requirement applies. Some saw this confusion as a reason to object to the provisions¹⁶. However, others argued for the increased notification requirements to be applied nationwide regardless of the activities of the community council so as to avoid confusion and maintain national standards¹⁷.

Fife Licensing Forum, East Renfrewshire Licensing Forum and Central Aberdeenshire Licensing Board all view the current law on neighbour notification as inadequate. However, they object to the proposed increase to 50m as being too big. They note likely significant increased costs. Instead, they advocate a rethink to reach a middle ground.

Aberdeenshire Licensing Board – North Division also questioned the resource burden. It noted that, if the increased costs are to be borne by the applicant, they would be being unfairly penalising due to the activities of a third party, a community council.

The Scottish Tourism Alliance British Hospitality Association objected on the ground that increased burden and timescales would discourage smaller businesses from entering the market thereby affecting diversity in the industry. A few other industry organisations made similar remarks, noting that licensing requirements should not prevent competition or discourage investment. Instead, they should be working for communities and responsible businesses.

Ban on alcohol advertising near schools etc.



Some respondents felt that the proposals did not go far enough and considered them too lenient. A few respondents wished the provision

¹⁴ West Lothian Licensing Board, Aberdeenshire Council Environmental Health Service, Highland Licensing Board, East Lothian Licensing Forum Consultation Response

¹⁵ Renfrewshire Licensing Board, Central Aberdeenshire Licensing Board

¹⁶ Officers of Aberdeen City of Licensing Board, Aberdeenshire Licensing Board – North Division, SOLAR

¹⁷ South Ayrshire Alcohol and Drug Partnership, NHS Ayrshire and Arran, Outer Hebrides Alcohol and Drug Partnership (OHADP), South Lanarkshire Council, Alcohol Public Health Specialists Group

extended to include a ban on advertisements near youth and community centres¹⁸.

Midlothian Licensing Forum wished to see a blanket ban instituted, as well as limits placed on advertising via social media. Health organisations generally supported an extension of the ban to all public places including buses, billboards, on TV before 9pm and in cinemas screening under-18 films. An introduction of “Loi Evin”¹⁹ type rules as in France was also advocated by one respondent.

Some respondents questioned the proportionality of the proposals given that exposure from TV and social media would continue²⁰ and since underage drinking is declining.²¹

A few respondents cautioned over the wide definition of “advertisement”. This would include branded products such as beer mats, parasols and glasses. It has been suggested that banning these would have a significant impact on premises within the restricted areas which use these products²².

Those who opposed the provisions branded them impractical, unnecessary and completely unworkable. Many questioned what would happen if a nursery moved within 200m of already established premises²³. There was some concern that the effect could be to criminalise previously legitimate activity²⁴. Industry organisations expressed particular concerns in relation to nurseries and crèches, since no national database is kept as to their locations.

Concerns were also presented over the definition of “outdoor children’s play area” which, respondents argued, was very broad and unclear.

The Law Society of Scotland noted that the provision would create an offence applicable to everybody, not just licence holders. Another respondent gave the example that wearing a T-shirt with a logo of an alcohol company – such as a football shirt – outside a school would become an offence²⁵.

The Portman group argued that no regulation is required as adequate protections for children already exist through self-regulation. Industry organisations noted that a 100m pledge around schools is already in force, which is monitored and enforced at no cost to the tax payer.

The Advertising Association noted that compliance with Advertising Standards Authority (ASA) standards was already very high, and that implementation of the proposals would be tantamount to an advertising ban in urban areas. The

¹⁸ Youth Link, NHS Ayrshire and Arran, South Ayrshire ADP, North Ayrshire Council and H&SCP

¹⁹ The Loi Evin is a piece of French legislation. It places significant restrictions on alcohol advertising, including a complete ban on TV and cinema advertising. It also prevents alcohol sponsorship of sporting and cultural events.

²⁰ East Lothian Licensing Forum Consultation Response

²¹ Scotch Whisky Association, Scottish Beer and Pub Association

²² West Lothian Council and Aberdeenshire Council Environmental Health Service

²³ National Licensing Standards Officers Group, Law Society of Scotland

²⁴ Scotch Whiskey Association

²⁵ The Scottish Tourism Alliance and the British Hospitality Association

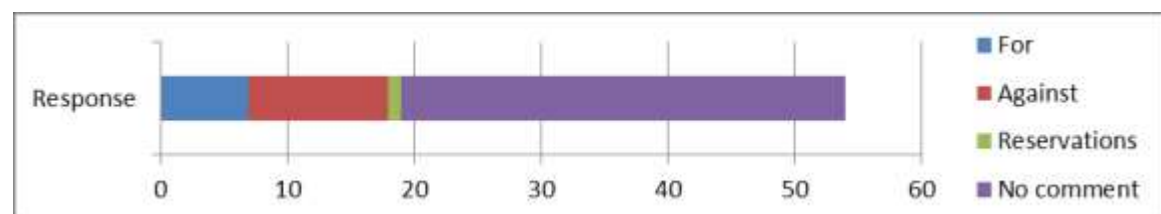
ASA itself requested that it be given the opportunity to address any concerns about alcohol advertising through the self-regulatory systems already in place.

The Scottish Beer and Pub Association made particular points in relation to the effect of advertising. They argued that advertising increases market share and brand loyalty within the existing consumer groups and maintained that it does not cause an increase in overall consumption.

The Scotch Whisky Association expressed concerns about the effect on distilleries, which are often in small towns and villages. They also highlighted the impact on tourism events, such as the Speyside Whisky Festival.

Several organisations expressed concern over the issue of enforcement and its associated burden.²⁶ The Law Society in particular questioned how the 200m limit will be determined. They also noted that a breach of such provisions would normally result in a licence review not prosecution.

Advertising in licensed premises



The Salvation Army didn't think the proposal was strong enough and recommended trials where no promotion, isolated promotion and no restrictions are tested. The Scotch Whisky Association noted that there had been no assessment of how much advertising is currently being done in this regard.

Some respondents noted that the provisions in the Licensing (Scotland) Act 2005 already significantly limit the advertising of alcohol available for consumption off the premises. Concerns were also presented over convenience stores with limited space which already have to deal with complex regulations.

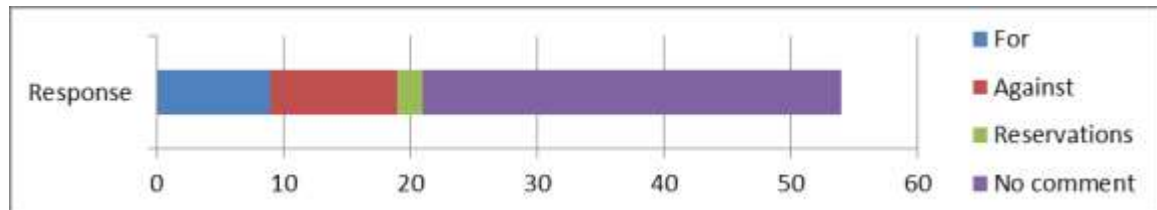
Several respondents who objected noted that the provision will have limited effectiveness. They would instead limit the information consumers receive about drinks and food combinations, which promote responsible drinking.

The Law Society of Scotland raised an issue with the wording of the provision which in its present form presumes the whole of the premises is not licensed. Usually entire supermarkets are licensed and form part of the licensed premise so the provision would not apply to them.

²⁶ Scotch Whisky Association, Scottish Beer and Pub Association, Midlothian Council and the Outer Hebrides Alcohol and Drug Partnership (OHADP), Law Society of Scotland

The question as to how the provision will be enforced was yet again raised by several respondents. The National Licensing Standards Officers Group commented that it is not sensible to ensure compliance through penalties.

Advertising at sporting and cultural events



This provision has had mixed responses from respondents outwith the alcohol industry. Concerns mainly revolved around lost opportunities for young people to participate in sporting activities if funding from sponsorship deals with alcohol companies is disturbed²⁷. Others favoured the provision but wanted to see alcohol sponsorship phased out of all sporting events²⁸.

The Wine and Spirit Trade Association and Scottish Retail Consortium noted that such a provision would remove a net benefit to society through loss of sponsorship deals, uniforms, events and other support to youth programmes. They further commented that such a loss would lead to a general decline in public health.

Concerns remained over broad definitions used in the provision. In particular, the definitions of “cultural” and “premises” were thought to be too wide and ambiguous. “Intended audience” was also questioned, with many asking if this included TV audiences.

The issue of enforcement presented as a potential problem. Fife Licensing Forum commented that it may be unreasonable to take the ages of everyone attending an event. Even asking the organisers to provide such a list may be troublesome for the perspective of evidentiary rules, as they would be providing evidence against themselves.

The Portman group insisted that self-regulation was still sufficient. Other industry organisations concurred, highlighting that the current rules prohibiting alcohol promotion at events which “have a particular appeal to” under-18s are strictly enforced. They also note that the rules apply to all events where more than 25% of the audience is under 18.

In addition to these restrictions, the Portman Group’s Sponsorship Code requires the promotion of responsible drinking and healthy lifestyle options.

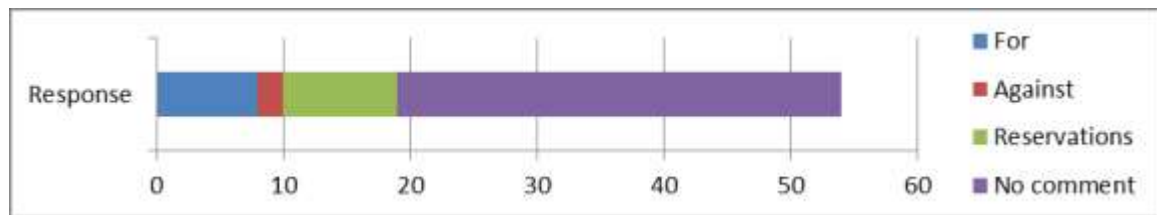
Concerns were also presented by few respondents that many events are run by volunteers, who are unlikely to be aware of the regulations surrounding the

²⁷ Youth Link Scotland

²⁸ Alcohol Focus Scotland, see also BMA Scotland and Outer Hebrides Alcohol and Drug Partnership (OHADP)

issue. Renfrewshire Licensing Board cautioned over this provision as it criminalises individuals for "low-level contraventions".

Alcohol education policy statements

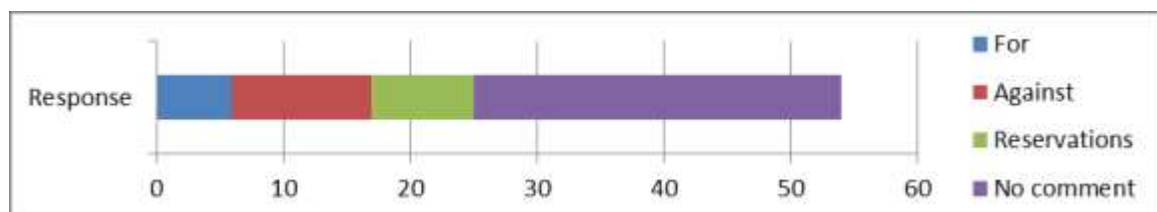


The majority of respondents from health and charitable organisations questioned the usefulness of such a provision. They noted that the current evidence shows that public education approaches are, on their own, not very effective at tackling public health problems. NHS Scotland in particular noted that such statements should not distract from other more effective measures being employed.

The Alcohol Public Health Specialists Group presented particular concerns regarding the provision's potential to widen inequalities. This is because those from disadvantaged backgrounds are less likely to respond to public health information than those from less disadvantaged backgrounds.

A few respondents asked for clarification and further details on content.

Drinking banning orders (DBO)



There was considerable concern among respondents over the need for such an order. Many believed that mechanisms already existed within the criminal justice system to tackle the problem. Options include exclusion orders under s.94 of the Licensing (Scotland) Act 2005 and anti-social behaviour orders (ASBOs)²⁹.

NHS Scotland commented that it would be preferable to strengthen existing mechanisms. Some respondents noted that the orders could be useful but recognised that they also hold the potential to criminalise vulnerable people for what could be seen as a health issue³⁰.

²⁹ Alcohol Focus Scotland & Midlothian Council highlight a lack of evidence that DBOs are required

³⁰ Aberdeenshire Council Environmental Health Service, Shetland Licensing Forum and Shetland Alcohol and Drug Partnership, Aberdeen City Alcohol & Drug Partnership, Aberdeenshire Alcohol & Drug Partnership, Moray Alcohol & Drug Partnership, and NHS Grampian

The Midlothian and East Lothian Drugs and Alcohol Partnership (MELDAP) commented that it should be made clear why existing measures are considered inadequate. It also noted that the English experience of introducing such a scheme should be considered.

West Lothian Licensing Board noted that the proposed Drinking Banning Order does not relate to off-sales premises, which are the cause of most problems. South Ayrshire ADP and NHS Ayrshire and Arran noted this measure may in fact increase off-sales, in which case the “watchful” eye of bar staff is removed. The Alcohol Public Health Specialists Group further added that if more people start buying from off-sales and drink at home it may increase associated risks of family disruption and domestic abuse.

There were only a handful of respondents who supported the provision unreservedly. These included the Scottish Beer and Pub Association, which commented that it would encourage people to be responsible for their own actions, ensuring a safer environment for all.³¹

There were considerable questions over enforcement by off-sales premises and their staff, the police and local authorities, as well as the costs of applying for and monitoring such orders. Additional concerns related to whether such an order would be noted on criminal records.

There were also questions around who would provide the approved courses and how they will be funded³². North Ayrshire Health and Social Care Partnership & North Ayrshire Council noted that requiring payment from the offender will have an impact on uptake and therefore the opportunity to address the underlying issue.

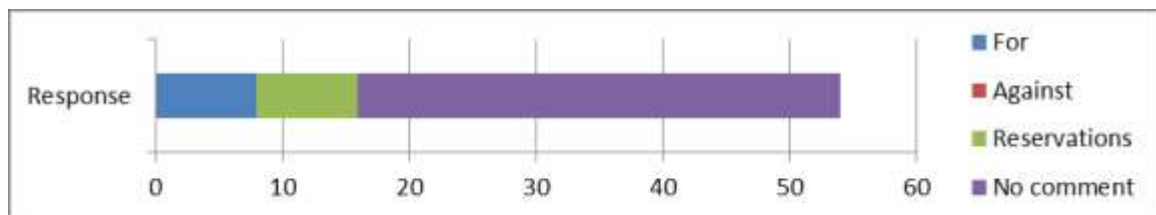
The Scottish Courts and Tribunals Service (SCTS) provided a number of technical comments on the practical and financial impact of Drinking Banning Orders. In particular, the SCTS noted that the Bill’s provisions would require reasons to be given in open court if the court refuses to grant an application for a Drinking Banning Order. SCTS estimate that, even if only two minutes are spent on such explanations, it would cost it around £376,000 per annum. This is because alcohol is a factor in a large number of offences.

The SCTS also highlighted that the Bill would require STCS staff to explain the effects of a Drinking Banning Order in a letter to the offender if they were not present in court. In SCTS’s view, this would constitute legal advice. It would therefore not be appropriate for such advice to be given by staff, unless a prescribed form of words was provided for in the Bill.

³¹ See also Midlothian Licensing Forum

³² East Renfrewshire Licensing Forum

Fixed penalty offences involving alcohol: alcohol awareness training as alternative to fixed penalty

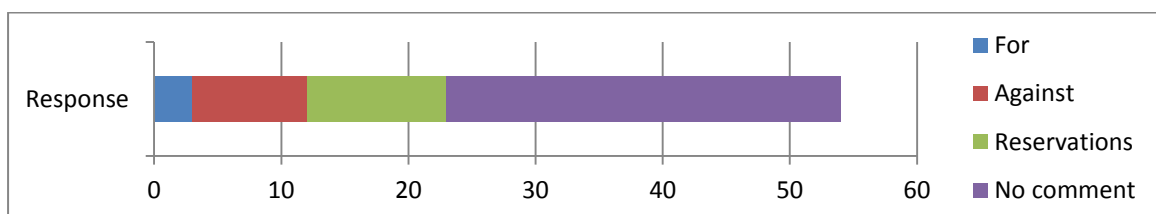


Most licensing organisations which supported the provision questioned funding arrangements. West Lothian Council noted that it would most likely fall to local authorities and Alcohol and Drug Partnerships to deliver the courses. They also noted that it must be borne in mind that such training may not be suitable for everyone.

Youth Link suggested that the youth sector may be prepared to support pilot programmes. Others were unsure and thought a pilot would be a helpful starting point to assess its usefulness.

NHS Scotland suggested that such a programme would have limited effectiveness and better alternatives are available. North Ayrshire Health and Social Care Partnership and North Ayrshire Council commented that this would enhance early intervention but may place financial pressure on individuals.

Offences involving alcohol: notification of offender's GP



West Lothian Council recognised that such a measure may increase referrals for treatment. Others who supported the provision did so expecting that this may aid early intervention.

Most health organisations were against this provision. They noted that it has the potential to upset the relationship between doctor and patient, and to breach trust and confidentiality. Others questioned the aim of this provision since no correlating duty is explicitly placed on the GP to take further action.

Some respondents, including BMA Scotland, objected and noted that GP will already be aware of any alcohol problem. It also stressed that more effective options, such as Alcohol Brief Interventions, are available. BMA Scotland also raised concerns about the appropriateness of having conviction information on medical records, which might be accessed by employers or insurers.

Scottish Health Action on Alcohol Problems objected to the provision commenting that the focus should be on early identification and early

intervention. The Salvation Army opposed the provision as it may reinforce stereotypes about homelessness and drinking³³.

Respondents asked questions about whether notification would be required for all offences, for example, would drink driving offences be covered? There was also concern as to whether the notification would be for repeat offenders only or also for first time offenders. The Law Society questioned whether the provision was justified in view of privacy rights and a lack of likely public benefit since there is no duty on GPs to take further action.

The General Medical Council had particular concerns in relation to how an offender's GP information is to be obtained. They made further reference to the professional obligations on GPs to act in accordance with GMC guidelines where they have particular information about patients. They were also concerned over the responsibilities of a GP where the GP took no action after a notification and a further offence was committed.

The SCTS presented significant concerns over cost implications (balanced against a belief that the desired outcome would not be achieved as no specific action on part of the GP would be required). SCTS noted that only rarely would the court have information about an offender's GP, so it will usually need to ask for it. This may result in significant delays if the accused does not have the information on hand and the case has to be adjourned until such information can be obtained.

The SCTS also noted significant technical problems with providing notification to GPs. Current systems would not necessarily make mention of alcohol being involved in the crime. More detailed information about the charge might include personal information about the victim. The SCTS highlighted that it would anticipate very high costs in relation to establishing a new, secure notification system which would take into account all relevant data protection issues.

³³ Scottish Families Affected by Alcohol and Drugs made similar remarks.