



9th March 2023

Alcohol Advertising and Promotion Consultation  
Alcohol Harm Prevention Team  
Scottish Government 3E,  
St Andrews House  
Regent Road  
Edinburgh  
EH1 3DG

Via email to: [alcoholmarketing@gov.scot](mailto:alcoholmarketing@gov.scot)

Dear Sir or Madam

## IoL Response to Scottish Government Consultation: Restricting alcohol advertising and promotion

The Institute of Licensing (IoL) is the professional body for licensing practitioners across the UK, representing local authority, police, private practice and industry practitioners. The organisation operates on a national and local level with 12 regions across the UK, including the Scotland region alongside Wales, Northern Ireland, and 9 regions across England. The IoL's areas of interest include all public regulatory licensing including the Licensing Act 2003 and associated law, regulation and guidance.

The Scotland region of the IoL is operated through a committee of IoL members, elected by Scottish IoL members to represent Scottish members' views and interests. The IoL wishes to make representation regarding the general proposals within the consultation, and our response has been compiled by Scotland regional committee members.

### Regulatory Burden

The IoL noted that the consultation was issued without an accompanying Business Regulatory Impact Assessment. Regulatory burden is something that impacts licensing practitioners in local authorities as well as with businesses. We note that the Government's own guidelines under the Better Regulation Agenda says:

*"At the outset of any policy development, non-regulatory options such as voluntary regulation should always be considered and a BRIA completed to ensure the costs and benefits of each option are fully considered and compared".*

It would appear to us that there has been no assessment of the existing non-statutory framework around alcohol advertising which exists through organisations such as the ASA and the Portman Group. Non-regulatory options ought to have been explored, and the absence of Business Regulatory Impact Assessment (BRIA) is discouraging



as the information obtained in that process would have enabled all stakeholder including licensing practitioners such as our members to put forward impacts ahead of the framing of the consultation itself. We would encourage the Scottish Government to follow their own rules by ensuring a formal BRIA is produced in order to inform the consequences of these proposals on the economy, tourism and local communities, as well as on local authorities and licensing practitioners from all stakeholders.

### **Islands (Scotland) Act 2018**

Our local authority membership includes persons who live and work in small, rural and island communities. To that end we also note that there has been no Island Communities Impact Assessment (ICIA) carried out in relation to how the proposals might affect island communities, as required under the Islands (Scotland) Act 2018.

### **Post-legislative Scrutiny of the Licensing (Scotland) Act 2005 (“the 2005 Act”)**

We are concerned that these proposals will lead to further legislative and regulatory change in an environment which has already seen significant changes and more that most legislative provisions, previously. The practice of licensing in Scotland has been a spinning wheel since the commencement of the 2005 Act. Yet, there has been no post-legislative scrutiny of any of the existing licensing laws, not just in relation to alcohol harm, but whether they achieved the intended aims when originally introduced, with the single notable exception of the ongoing study into the efficacy of minimum pricing. For example, what steps have been taken to analyse the impact of the rules introduced by the Alcohol etc (Scotland) Act 2010 regarding single display areas, and bans on promotional activity within 200m outside off-sales premises?

We would call on the Scottish Government to consider a review of the existing licensing framework to determine whether existing laws are:-

- (a) working effectively; and
- (b) where enforcement powers exist, are they being utilised, before significant additional new laws are introduced.

Turning to some of the specific proposals, our concerns in relation to the impact on licensing practitioners is one primarily of local authority resource and operability of the law.

### **In-store Alcohol marketing**

A chief concern for us is the impact on resource that some of the changes, if adopted would bring. For example, the “shop within a shop” proposal which would require existing alcohol licensed premises to move their alcohol displays, would require applications for variation under the 2005 Act. In theory, every single off sale premises in Scotland would need to move the alcohol displays in order to comply with this. We estimate that there are 5500 off sale premises in Scotland. If such a law were introduced, that would create an avalanche of applications which current local authority licensing resource is not equipped to deal with. Such applications, assuming they were minor variations, would also stretch colleagues in building standards departments who would have to check the



new layout plans and confirm capacity calculations (where the licensing board consults with building standards). We would anticipate that in many cases such changes will actually require a major variation depending on the specific layout of shop premises, especially in smaller shops, placing a greater burden on the local licensing department, and a further burden on the licensing board administration in terms of hearings and public consultation.

The consultation also makes reference to various other possible restrictions on the display of alcohol in-store, for example, prohibitions on aisle end displays. Given the varied physical layouts of premises licensed by licensing boards, a one size fits all approach may be difficult for licensed boards to apply. It may be that the Scottish Government considers allowing the display of alcohol within store to be a matter that licensing boards can regulate by way of their policy as opposed to applying strict criteria (should the Scottish Government be minded to pursue this policy option).

A similar impact would occur if the proposal to ban window displays was introduced, or if the proposal to ban aisle-end displays were introduced. There are a great many examples of licences across Scotland where such displays have been approved by licensing boards having taken into account the tests under the 2005 Act.

### **A Scottish Regulator?**

We note the suggestion that there may be some new Scottish regulator. We are firmly of the view that decisions concerning licensed premises, including how alcohol is sold, marketed, and advertised in or connection to licensed premises, is and should remain a matter for local licensing boards. Local licensing boards are without doubt best placed to understand the nuance and local knowledge of their own communities. We are firmly opposed to the idea of a national regulator which might cut across local decision making around licensing.

### **Jurisdictional Issues**

As an organisation with membership across the UK, the IoL is concerned to see that the Scottish Government has sought responses on matters which lie outwith its jurisdiction. We take the view that a public consultation actively seeking views on matters which are ultra vires to the Scottish Parliament is unwise and creates public uncertainty and confusion for our members. Should the Scottish Government wish to seek greater powers to regulate matters outwith its competence, it should do so separately and not through a consultation of this nature.

Separately, we ask the Scottish Government whether it has considered what the implications of these proposals are in relation to the United Kingdom Internal Market Act 2020 and whether it has taken legal advice on whether consent for any legislation might be required from Westminster.

### **Declarations**

- The Institute of Licensing is a registered charity whose remit is to promote best practice in licensing law, with a particular focus on the representation of licensing officers and agents from regulators such as local government and the police. Our membership is very wide and includes agents in private practice or



connected industries such as environmental health, and a very small number of our members are operators of licensed premises.

- Regarding publication, we are content to have our response made public.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Daniel Davies'.

Daniel Davies

Chairman

The Institute of Licensing is a charitable company limited by guarantee, constituted as a not-for-profit organisation.

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