

## “They speak of my drinking, but never think of my thirst”

**David Clifton**, director of **Clifton Davies Consultancy Limited**, summarises recent developments in Scotland affecting the licensed trade

**A**s the Scottish independence debate grabs newspaper headlines, it is worth remembering that Scotland's licensing laws are completely different from those in England and Wales.

As I write, the outcome is awaited of an appeal before the Court of Session in Edinburgh, commenced on 4 February by the Scotch Whisky Association (SWA), against a previous finding that the Scottish government's plans to introduce a minimum price of 50p per unit of alcohol is “not incompatible with EU law”. The Alcohol (Minimum Pricing) (Scotland) Act was passed in June 2012, but has not yet been implemented due to the legal challenge. Even if the current appeal fails, the SWA has indicated that it is prepared to continue its challenge in the Supreme Court of England and the European Court of Justice.

A report in *The Lancet* predicted that setting a minimum alcohol price of 45p per unit in Great Britain would result in harmful drinkers in the lowest income group reducing their annual alcohol consumption by 7.6% (about four weeks' worth) and spending less on alcohol overall. The report concluded that “large reductions in consumption in this group would coincide with substantial health gains in terms of morbidity and mortality related to reduced alcohol consumption”.

In contrast, the UK government has decided not to proceed, at this time at least, with minimum unit pricing. Instead, on 5 February it published its guidance on banning the sale of alcohol below the cost of duty plus VAT for England and Wales. It is anticipated that the ban will come into force on 6 April by means of a mandatory condition being added to premises licences and club premises certificates.

With public health issues in mind, the “125ml wine measure campaign” was launched in Scotland on

22 January, seeking to encourage pubs, bars, clubs, hotels and restaurants to increase the availability of 125ml wine measures. It has been initiated by the Scottish Government Alcohol Industry Partnership, a partnership between the Scottish government and leading alcohol producers and their trade associations, to tackle alcohol related harm and promote responsible drinking. It recommends that Scottish businesses make available, promote and set a price for a 125ml measure and ensure that staff know that such a measure is available to customers.

On 10 February, the Scottish government published a report by a group comprising representatives from the on and off-trade, as well as Licensing Boards, entitled

*Review of Alcohol Licensing Fees – Steering Group: Recommendations to Scottish Ministers*. It concluded that while the current licensing fees regime could be improved, there was no consensus regarding whether an alternative approach should be based on turnover, square footage or modifications to the existing regime. As a result, it was decided that at this stage it would not be possible to justify taking a fundamentally different approach from the current fees system based upon rateable values.

The Steering Group made a number of recommendations, including amending the occasional licence fees beyond £10, considering whether the special status awarded to members clubs is still appropriate, and putting a duty on boards to report their fee income and expenditure in a transparent manner. More recently, the Home Office has launched a public consultation on a move from centrally-set to locally-set fees under the Licensing Act 2003, which seems likely to see licensing fees rising in England and Wales. Envious looks may yet be directed by operators towards their Scottish counterparts. 🍷



## Questions & Answers



**Q: I've been operating a bar in London but am about to take over one in Scotland. With British Summer Time starting on 30 March, is the position any different under Scottish law?**

**A:** Yes it is. In England and Wales, in order to ensure that you don't lose an hour's trading when the time at 1am becomes 2am, unless your premises licence specifically covers the position when the clocks go forward, you need to get a temporary event notice. In Scotland, the Licensing (Scotland) Act 2005 provides that the beginning of BST is to be disregarded on the night in question with the consequence that licensing hours will end at the time they would have ended had BST not begun. However, you won't get the best of both worlds as a similar provision applies when BST ends.

**Q: Can you settle an argument please? When did Scotland first have its own licensing laws?**

**A:** According to that well known authority on Scottish Licensing law, Jack Cummins of Hill Brown, “an early trace of licensing law is to be found in a record disclosing that King James IV decreed that anyone drinking in a tavern after nine in the evening was to be drowned in a ditch of fresh water”. However, according to the Nicholson Committee report of 2003, the first Scottish licensing legislation appears to have been an Act of 1756, followed by an Act of 1802, subsequently redrafted in what was commonly known as the Home Drummond Act of 1828.

**Q: Are the licensing objectives under Scottish law different from those in England and Wales?**

**A:** Yes. In Scotland they include protecting and improving public health, something so far omitted from the legislation in England and Wales, despite calls from pressure groups to introduce it.

## Clifton Davies Consultancy Ltd



Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson Wilson LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.

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