

## **Federation of Small Businesses (FSB) in Scotland response to Scottish Government consultation on Restricting Alcohol Advertising and Promotion**

### **Introduction**

The Federation of Small Businesses (FSB) is Scotland's leading business organisation and aims to help smaller businesses achieve their ambitions. These micro, small and medium businesses comprise almost all enterprises in Scotland (99%), employ 1.2 million people and contribute £110bn to the economy.<sup>1</sup>

We welcome the opportunity to respond to the Scottish Government consultation on restricting alcohol advertising and promotion. The proposals contained within the consultation would have an impact on a significant proportion of our membership, not just producers and retailers, but those involved in marketing and creative businesses in the supply chain.

### **Overall response to proposals**

FSB Scotland does not support proposals to:

- prohibit alcohol sports sponsorship in Scotland;
- prohibit alcohol marketing outdoors, including on vehicles, and in public spaces in Scotland;
- further restrict the visibility of alcohol in retail environment;
- introduce structural separation of alcohol in Scotland to reduce the visibility of alcohol in off-trade settings;
- prohibit the sale or free distribution of alcohol branded merchandise in Scotland;
- prohibit advertising of alcohol in newspapers and magazines produced in Scotland;
- restrict alcohol branded social media channels and websites in Scotland;
- restrict paid alcohol advertising online in Scotland;
- restrict alcohol companies sharing promotional content on social media;
- explore prohibiting alcohol advertising on television and radio completely;
- restrict alcohol advertising in cinemas;
- restrict the content of alcohol marketing in Scotland to more factual elements; or
- require the alcohol industry to provide information and data on alcohol marketing campaigns in Scotland, or to provide local alcohol sales data.

### **Business Regulatory Impact Assessment**

Before getting into the reasons for our opposition to these proposals, we would like to express our disappointment that even a partial Business Regulatory Impact Assessment

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<sup>1</sup> <https://www.gov.scot/publications/businesses-in-scotland-2022/pages/headline-results/>

(BRIA) was not carried out as part of this consultation exercise. As stated in Scottish Government guidance:

*"Partial BRIAs should be carried out at consultation stage. The final BRIA builds on the partial BRIA and the consultation analysis. Both of these BRIAs require Ministerial sign-off"*<sup>2</sup>.

We are aware of the Scottish Government's position that a BRIA was not required to be carried out as this is a consultation on 'options' and not regulation. However, as this position is not made clear in the guidance provided by the Scottish Government, we are of the opinion that the partial BRIA should have been carried out in advance of this consultation being published.

It is particularly surprising that a BRIA has not been carried out in this instance given that it was only in November, in its Emergency Budget Review, that the Scottish Government committed to:

*"seek to balance the essential role that regulation plays in driving innovation and achieving economic, social and environmental goals with concerns businesses have expressed about the impact of new regulation at a time of other pressures and costs"*<sup>3</sup>,

and to:

*"establish a Joint Taskforce with COSLA, local authorities, our regulatory agencies and business to consider the differing impacts of regulation on business and drive early progress on the commitment made in the National Strategy for Economic Transformation to review and improve the process of developing, implementing and reviewing regulation to meet our economic and societal aims for the longer term"*.

FSB Scotland is grateful to be included as a member of this taskforce and would have liked to have seen alignment between government's commitment to considering the impact of regulation on businesses with the introduction of this consultation.

Carrying out a partial BRIA at this stage would also surely have highlighted that alcohol advertising is already heavily regulated, including by Ofcom and the Advertising Standards Agency. We are aware of specific industry trade bodies that also have a code of conduct to which they require their members to adhere. It is surprising that progress made through existing regulation or agreements is not fully explored in the consultation document, including through the Challenge 25 initiative, which has been adopted and implemented by industry. Key to the success of this scheme has been its co-design with industry.

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<sup>2</sup> <https://www.gov.scot/policies/supporting-business/business-regulation/>

<sup>3</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2022/11/emergency-budget-review-2022-23/documents/emergency-budget-review-2022-23/emergency-budget-review-2022-23/govscot%3Adocument/emergency-budget-review-2022-23.pdf>

## **Why it's so important to understand the impact of regulation**

FSB Scotland has been clear that a review of the overall burden of regulation on smaller business is of critical importance<sup>4</sup>. Small businesses in Scotland face a wide-ranging suite of regulatory changes in the short to medium term – the details of which, in many cases, remain unclear. From the Deposit Return Scheme (DRS) to potential local visitor levies (“tourist taxes”) to these suggested limitations on alcohol licensing, many smaller operators are facing the prospect of having to redesign the way they do business across several fronts.

This could not come at a worse time for Scotland’s small businesses. FSB surveys our members each quarter on the key issues and challenges facing them, with the results published as the Small Business Index (SBI). Our findings show decreasing confidence across our membership over consecutive quarters, with the latest finding an overall confidence level of -50<sup>5</sup> in Scotland. This is down from -45 in the previous quarter, and 4.1 points behind the overall UK-wide confidence figure. Crucially, confidence levels are at their lowest since the height of the pandemic in late 2020.

This, of course, should come as no surprise, as the headwinds currently facing business and preventing an economic recovery from the pandemic are well known: from rising energy and fuel costs, to global supply chain issues, to labour market tightening.

Also unsurprisingly, our SBI results show almost nine out of every 10 Scottish businesses (86.2%) have seen a sizeable change in their business costs over the last 12 months, with increases in fuel and utilities the most common drivers.

Almost half of small firms (42%) expect to run below capacity over the next three months and only a third (32.7%) are expecting to grow in the next 12 months. It’s worth noting this survey was undertaken in December 2022, before the announcement by UK Government that business support for energy costs would be cut significantly from April.

The findings of FSB’s research are bolstered by those from organisations including the Fraser of Allander Institute (FAI). In the latest edition of their quarterly Scottish Business Monitor, published in January 2023<sup>6</sup>, they found that 90% of firms surveyed had seen their costs increase on the year, with just under half reporting that they expected to reduce operations in 2023 due to higher energy bills. Meanwhile, our SBI results for quarters 2 and 3 in 2022 found that one in six Scottish small businesses believed they would shrink, sell or close in the next 12 months.

The FAI monitor found the net balance of all core business activity indicators in the final quarter of 2022 were negative, for the first time since early 2021. It highlighted a continuing negative net balance for expected capital investment and export activity, with

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<sup>4</sup> <https://www.fsb.org.uk/resources-page/sturgeon-successor-must-think-small-first-on-regs-says-fsb.html>

<sup>5</sup> <https://www.fsb.org.uk/resources-page/scottish-small-business-confidence-down-again-as-cost-of-doing-business-crisis-endures.html>

<sup>6</sup> <https://fraserofallander.org/scottish-firms-struggle-with-the-cost-of-doing-business-crisis/>

75% of businesses expecting growth in the Scottish economy to be weak or very weak over the coming year.

Therefore, it's important government does all it can to support business resilience. This is especially important for small businesses, who have less ability to absorb economic shocks than larger businesses.

### **Impact on trading by small businesses**

Clearly, the proposals contained in this consultation would have an impact on the trading abilities of many small businesses across Scotland. Restricting or prohibiting the sale of branded merchandise would reduce or remove a key stream of income for distilleries, for example. Many pubs were able to weather reduced income during the pandemic as a result of sponsorship investment from alcohol brands on parasols, for example, when only outdoor drinking was permitted.

While this consultation may be branded as merely looking for views as opposed to committing to bringing in regulations, it has, as noted above, come at a time when business confidence is at a particular low. Understanding the economic context in which consultations are brought forward is vital to bolstering business confidence – and, at the risk of labouring the point, the current context would have been revealed had a partial BRIA been carried out in advance of this consultation.

Carrying out a BRIA would also have highlighted the potential – and significant – costs that would be incurred by small businesses if any of the proposed restrictions were put in place. Businesses have had to endure costs relating to reconfiguring their spaces as a result of pandemic-related restrictions in the last couple of years. While government support was provided to sustain firms and their employees during the pandemic, we note this consultation does not reflect on the support that would be required by businesses should any of the proposed restrictions be implemented.

The situation we currently find ourselves in with the Deposit Return Scheme (DRS), for example, demonstrates what can happen when issues raised by industry may be heard, but are not acted on. It's also an example of what can happen when economic context is not factored into government decision-making (a key issue with DRS is that consultation took place pre-pandemic, yet the scheme is now being implemented according to a design put in place during very different economic circumstances).

### **Small businesses in the alcohol and related industries**

The alcohol industry makes a significant contribution to the Scottish economy, with 4.9% of the Scottish economy (£8.1bn) attributed to the sale of alcohol. In addition, the industry accounts for 60,000 jobs directly<sup>7</sup>. However, we know both of these numbers will be even higher when we consider jobs indirectly supported by the industry, e.g. in

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<sup>7</sup> <https://www.smf.co.uk/wp-content/uploads/2023/02/Getting-in-the-spirit-February-2023.pdf>

retail. Given the makeup of the Scottish economy, a majority of this economic and employment contribution will be from small businesses.

Scotland has a proud heritage of producing and selling alcohol and related products, and the industry is rightfully recognised – including by government – for its importance to Scotland as a tourist attraction. Scotch whisky is a key source of export activity in the country, with almost all production being for export<sup>8</sup>.

FSB spoke to a varied cross section of our membership in the development of this consultation response, both in terms of geography and business-type. Each spoke of their pride at being involved in a 'centuries old' Scottish industry – but also of the economic challenges facing the sustainability of their business, and a sense that government was not cognisant or responsive to this.

One small brewer and distiller spoke of their plans to introduce carbon capture at their site, something for which they have finally been able to attract 50% funding after years of discussion with an enterprise agency. However, this initiative is now under threat due to the additional resource the business will have to invest in the implementation of DRS. The owner commented that they had been looking at ways to keep the project afloat. However, such was their concern at what else might be coming down the line in terms of potential restrictions to their ability to generate income, as proposed in this consultation, that they were unlikely to proceed.

Elsewhere, a family-run distillery, looking to make significant investment in their local area with their expansion plans, spoke of their disappointment that obstacles to their growth keep appearing which jeopardise their ambitions – all with no or limited consultation with them or their industry. Following the impact of DRS, and a delay in their expansion plans caused by the lack of a transitional arrangement for applications that were in progress when National Planning Framework 4 (NPF4) was implemented, coupled with the proposals contained in this consultation, they are seriously considering pulling their products from Scottish market.

From distillers to retailers, members spoke of their disappointment that the contribution of their business to the Scottish and their local economy appears to be disregarded by this consultation. Small brewers and distillers devote their lives to the creation of niche products, many of which reflect the heritage of their local area. To see their products dismissed in the consultation document as "essentially variations of the same thing" without branding or marketing to differentiate products does a huge disservice to these businesses, the jobs and families they support, and the economic contribution they make.

Retailers, particularly those with independent bottle shops, spoke of their frustration over being lumped into a homogenous group with, for example, large supermarkets. FSB has always asked government not to view business as a monolith<sup>9</sup>, and there is lack of

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<sup>8</sup> <https://www.smf.co.uk/wp-content/uploads/2023/02/Getting-in-the-spirit-February-2023.pdf>

<sup>9</sup> <https://www.fsb.org.uk/resources-page/sturgeon-successor-must-think-small-first-on-regs-says-fsb.html>

recognition within this consultation as to the vast difference between how different retailers advertise their alcohol-related products.

Specialist retailers have very different customer bases when compared to supermarkets, for example – and are highly unlikely to be frequented by the groups about which this consultation is concerned. Indeed, innovative small producers – going up against massive multinationals when competing for potential customers’ attention and business – need to use a full marketing mix to showcase their products to potential customers, especially smaller producers going up against the massive multinationals.

### **Harmful drinking in Scotland**

Despite the concerns over the potential impact to their businesses should any of these proposals be implemented, each member FSB spoke to in developing this submission was clear that, despite measures such as MUP being introduced, alcohol abuse remains a significant issue in Scotland. However, there was a feeling the evidence provided in the consultation document was selective, and did not fully reflect progress made in recent years.

For example, the latest edition of the Scottish Health Survey (2021) confirms the prevalence of hazardous or harmful levels of weekly alcohol consumption has declined steadily since 2003<sup>10</sup>. Hazardous or harmful levels of alcohol consumption were down across all age ranges in 2021, and stood at 9% for those in the 16-24 bracket; the second lowest rate overall.

Furthermore, we note the analysis carried out by Credos in 2022<sup>11</sup> into alcohol advertising and sponsorship marketing spend, alcohol consumption, and alcohol specific harms, which found that alcohol advertising spend has outpaced the total units of alcohol sold since 2011, indicating that there is something more than just advertising or marketing driving sales.

Indeed, in terms of what drives problem drinking in Scotland, we believe it is best to consider evidence of what is driving this in the round, instead of focusing on one potential reason. For example, the links between alcohol abuse and mental health issues are well established, as noted in the 2022 report from the Mental Welfare Commission for Scotland<sup>12</sup>.

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<sup>10</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2022/11/scottish-health-survey-2021-volume-1-main-report/documents/scottish-health-survey-2021-volume-1-main-report/scottish-health-survey-2021-volume-1-main-report/govscot%3Adocument/scottish-health-survey-2021-volume-1-main-report.pdf>

<sup>11</sup>

<https://static1.squarespace.com/static/5c73bfbbf4e53147539557f7/t/62f2492b22e6b6134c35d19c/1660045615541/Analysis+of+alcohol+advertising+spend+and+alcohol+consumption+FINAL.pdf>

<sup>12</sup> <https://www.mwscot.org.uk/news/new-report-scotlands-crisis-mental-ill-health-alcohol-and-drug-use-ending-exclusion>

## **Conclusion**

These proposals to severely restrict the sale and promotion of alcohol in Scotland could not come at worse time for Scotland's hard-pressed small businesses. If implemented, they would increase costs, restrict markets and have negative impacts way beyond the licensed trade and drinks industry.

While this consultation seeks to tackle a recognisable problem in Scottish society, if even some of the suggested solutions it contains were implemented, there would be significant unintended consequences for Scottish businesses of all kinds.

By not undertaking a BRIA, the Scottish Government has not only failed to follow its own guidance, it has also failed to provide any evidence that the measures are in any way proportionate.

FSB therefore strongly recommends government acknowledges the challenges small businesses have been facing over the last three years, as well as those they are continuing to navigate during the current cost of doing business crisis and does not proceed with these proposals.